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DIGEST OF DECISIONS

OF THE DEPARTMENT OF THE INTERIOR

IN

CASES RELATING TO THE PUBLIC LANDS

(INDIAN MATTERS INCLUDED)

PART I

FOR TABLES OF CASES REPORTED, CITED, AND OVERRULED, ACTS OF CONGRESS AND REVISED STATUTES CITED AND CONSTRUED RULES OF PRACTICE CITED AND CONSTRUED, AND CIRCULARS OF INSTRUCTIONS, SEE PART II

VOLUMES 41 TO 51, INCLUSIVE

EDITED BY GEORGE A. WARREN

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DIGEST OF LAND DECISIONS

(VOLUMES 41 TO 51, INCLUSIVE)

ABANDONMENT

See CONTEST, II; RELINQUISHMENT; REPAYMENT, 46–251; 48–291, 292; 50–576; RESIDENCE, II.

1. The assignment of a desert-land entry is not an abandonment thereof, and one who has exhausted his right under the desert land law by making entry does not, therefore, by assignment thereof, become qualified, under the act of February 3, 1911, to take another desert-land entry by assignment. 41–9

2. The charge in an affidavit of contest against a homestead entry that the entryman has "wholly abandoned" the land is sufficient, without necessity for the further allegation that the abandonment has continued for more than six months; and upon proof or admission of the charge the entry is subject to cancellation. 41–628

3. In a contest charging abandonment, proof, after due notice, that the entryman has changed his residence from the homestead to another place, warrants cancellation of the entry, without reference to the duration of his residence elsewhere. 41–629

4. A charge of abandonment against a homestead entry is established by proof of the sale of a relinquishment of the entry. 42–250

5. The act of January 28, 1910, granting a leave of absence to homestead settlers in certain States for a period of three months from the date of the act, does not have the effect to protect such entries from a charge of abandonment for six months after the termination of the period of absence granted; but where absence next prior to such period of leave, and absence next following the same, together amount to more than six months, contest on the charge of abandonment will properly lie. 41–289

6. Absence under leave improvidently granted by the local officers on an insufficient showing apparent upon the records of the Land Department, but without fraud or misrepresentation on the part of the entryman, can not be held to constitute abandonment, nor afford a basis for contest. 47–148

7. A charge of abandonment is not sustained by evidence to the effect that the residence maintained was not of the character contemplated by section 2291, Revised Statutes, as amended by the act of June 6, 1912, provided a sufficient period of the lifetime of the entry remains within which to meet the requirements of the law as to residence, unless it be made to appear that the entryman has not acted in good faith. 47–108

8. The protection afforded by the act of July 28, 1917, to those in the military or naval service of the United States, whose entries became subject of attack by contest on the ground of abandonment, covers only the period of such service, and after discharge the homestead laws must be complied with by them, unless excepted by special statutory provision, to the same extent as by those not within the class protected by that act. 48–548

9. A charge of abandonment of a homestead made under the provisions of the act of June 6, 1912 (37 Stat. 123), is not sustained where the evidence produced shows that the contested entryman has not been absent from the land covered by his entry for as long a period as six months. Departmental decision in Stout *v.* Low (41 L. D. 629), distinguished. 45–571

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6. Section 2 of the act of January 28, 1910, granting leave of absence to homestead entrymen in certain States for a period of three months from the passage of the act, has no application to an entryman who failed to establish residence within the time fixed by law and was in default long prior to the date of said act, and such section will not protect the entryman in such case from a charge of abandonment during such period. 41–118

7. The act of January 28, 1910, granting a leave of absence to homestead settlers in certain States for a period of three months from the date of the act, does not have the effect to protect such entries from a charge of abandonment for six months after the termination of the period of absence granted; but where absence next prior to such period of leave, and absence next following the same, together amount to more than six months, contest on the charge of abandonment will properly lie. 41–289

8. In case of unavoidable casualties, rendering absences necessary during the seven months periods, leaves of absence may be applied for and granted under the general provisions of the act of March 2, 1889. 43–559

9. The provision in the act of June 6, 1912, that an entryman shall reside upon his entry for practically seven months each year after the establishment of residence does not prevent the allowance of leave of absence for a greater period, for proper cause, under the act of March 2, 1889. 43–144

10. Where the absence of a homestead entryman from his claim was due to a cause which would have entitled him to a leave of absence under the act of March 2, 1889, had he filed application therefor, his failure to apply for such leave should not prejudice consideration of final proof submitted upon his entry; but, in the absence of adverse claim or interest, the submission of proof may be treated as in effect an application for leave for the period of his absence and leave therefor granted under the provisions of that act. 43–144

11. The leave of absence granted to any homestead settler or entryman under the provisions of the act of December 20, 1917, for the purpose of performing farm labor during the pendency of the existing war is not dependent upon the remoteness of the place of employment from the claim; it is sufficient that the absence be in good faith for the purpose contemplated by the statute, and that due compliance be made with the regulations thereunder. 47–47

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5. Instructions of March 22, 1924, authorization for expenditures; paragraph 282, Circular No. 616, amended. (Circular No. 923.) 50–323

6. Paragraph 31 of the oil and gas regulations of March 11, 1920, promulgated pursuant to the authority contained in section 38 of the act of February 25, 1920, was merely intended for the administrative purpose of directing proper disposition of and accounting for moneys paid in connection with applications for oil and gas prospecting permits, and in that respect is to be deemed as merely supplemental to paragraph 85 of the general accounting circular of August 9, 1918. 49–344

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3. The department will apply the doctrine of *res adjudicata* and refuse to reopen a case in which there has been a final determination by it that a patent, issued on an entry in accordance with the official plat of survey existing at date of entry, conveyed title to adjoining lands added by accretion, where another subsequently attempts to set up a claim to a part of the land involved with the view to defeating the title asserted by purchasers who relied upon the validity of the patent. 49–253

4. In the absence of a statute to the contrary, lands formed by accretion belong to the adjoining riparian or shore owner. 50–357

5. Where, prior to divestiture of the Government's title to public land abutting on a meander line, an accretion had formed and the original survey had ceased to correctly represent the approximate shore line, title to the added area does not pass under a patent for the surveyed upland. 50–357

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8. While the requirement in the act of February 25, 1920, that an application for an oil and gas prospecting permit must be sworn to is mandatory, yet an application which does not appear upon its face to have been under oath is not a nullity, if the oath was properly and timely administered and that fact is later satisfactorily shown. 51–285

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3. Circular of November 20, 1912, concerning purchase of lands in Alaska for trade or manufacture. 41–357

4. Section 10 of the act of May 14, 1898, reserving a 60-foot roadway along the shore line of navigable waters in Alaska, contemplates the reservation of only an easement for highway purposes, and is no bar to the location of claims to the water's edge subject to the roadway easement. 42–255

5. The width of terminal tracts under section 6 of the act of May 14, 1898 (30 Stat. 409, 411), along shore lines at or near tidewater in Alaska, is not to be measured along the meander line of the shore, but determined by the distance, not exceeding 40 rods, between the side boundaries of the tract extending back from the shore line. 46–161

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19. The three-year homestead act of June 6, 1912, is applicable to homestead entries in the District of Alaska. 41–353

20. An occupant of public lands in the District of Alaska entitled under section 10 of the act of May 14, 1898, to purchase not exceeding 80 acres thereof at the rate of $2.50 per acre, may, upon furnishing the specific proof demanded by that section, acquire title through soldiers' additional entry instead of by making cash payment. 41–477

21. Where lands were claimed and substantially improved as a terminal for a constructed tramway prior to their withdrawal for inclusion in the Tongass National Forest, such valid rights were thereby acquired under the act of May 14, 1898, as excepted the lands claimed as terminal grounds from the operation and effect of said withdrawal, provided there is no undue delay in assertion of the claim before the Land Department. 43–523

22. The provision in the act of May 14, 1898, reserving 80 rods between claims located along navigable waters in Alaska, relates solely to the forms of entry or disposition mentioned in that act, namely, homestead entries, soldiers' additional entries or scrip locations, and entries for trade or business, and does not prevent the allowance of an entry for trade or business within less than 80 rods of a mission claim. 44–83

23. A roadway built without authority across tide lands in Alaska, for the use and benefit of the public, may be permitted by sufferance to remain, so long as it is not detrimental to public rights and does not constitute an interference with navigation. 44–441

24. Protest against a homestead entry in Alaska, based on adverse occupancy, is barred by failure to assert the adverse claim within the period of 90 days provided by section 10 of the act of May 14, 1898. 45–555

25. The judgment of a court of competent jurisdiction awarding the right of possession as between adverse claimants in a proceeding in accordance with the provisions of section 10 of the act of May 14, 1898, as carried into the act of March 3, 1903, is binding upon the Land Department in so far as the right of possession as between the parties is concerned. 45–555

26. The rights of an applicant who has complied fully with the regulations pertaining to the making of soldiers' additional homestead entries in Alaska and made timely proof of such requirements, relate back to the date of the application and are not affected by a subsequent withdrawal. 48–165

27. Instructions of November 14, 1912, concerning affidavit of nonoccupancy in connection with application to cut timber in Alaska. 41–354

28. Timber regulations of September 1, 1920, act of June 5, 1920. (Circular No. 722.) 47–564

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33. The rights of natives in Alaska to the use and occupancy of tide lands is not different from the rights of the public or of other riparian owners; and where such natives have placed structures upon tide lands they may be permitted to remain, by sufferance or implied license only, so long as they do not interfere with the right of public navigation and are not nuisances. 44–441

34. An allotment to an Indian or Eskimo in Alaska under the act of May 17, 1906, creates a perpetual reservation of the lands for the allottee and his heirs, but the title to the lands remains in the United States; and money recovered for a timber trespass upon such lands does not go to the allottee, but must be deposited to the credit of the United States. 44–113

35. By Article III of the treaty of March 30, 1867, under which the Territory of Alaska was ceded to the United States, and by subsequent acts providing for their education and support, Congress has recognized the natives of Alaska as wards of the Federal Government, thus giving them a status similar to that of the American Indians within the territorial limits of the United States. 49–592

36. While there is no specific statute relating to the subject, yet the inherent power conferred upon the Secretary of the Interior by section 441, Revised Statutes, to supervise the public business relating to the Indians includes the supervision over reservations in the Territory of Alaska created in the interest of the natives and the authority to lease lands therein for their benefit. 49–592

37. The United States has such an ownership, reversionary or otherwise, in the reindeer held or controlled by the natives of Alaska, as to bring them within the inhibition of the act of August 24, 1912, which denies to the legislature of that Territory the power to impose a tax upon the property of the United States. 51–155

38. An act of the Territorial Legislature of Alaska imposing a tax upon each reindeer killed for market does not extend to reindeer held or controlled by the natives of that Territory. 51–155

39. Neither the fifth proviso to section 10 of the act of May 14, 1898, nor the act of June 25, 1910, authorizes the reservation of tide lands in Alaska for the use of natives for landing places for canoes and other water craft. 44–441

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41. Sections 2, 8, and 11, Alaska town-site regulations (45 L. D. 227) modified. 46–460

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50. Regulations of March 20, 1921; coal prospecting permits in Alaska. 48–50

51. Instructions of March 24, 1922, relative to coal-mining permits in Alaska under section 10, act of October 20, 1914; Circular No. 491, amended. 48–597

52. Instructions of March 28, 1921, relative to oil prospecting permits in Alaska; paragraph 10 (*a*), oil and gas regulations modified. 48–49

53. Under the provisions of the act of April 28, 1904, notice of location

of coal lands in the District of Alaska must be filed in the recording district and the local land office within one year from date of location. 41–177

54. Locations and entries of coal lands in the District of Alaska, in the names and ostensibly in the interest and for the benefit of individuals, but in reality for the common use and benefit of an association or combination of persons, the use of the names of the individuals being merely to effect a colorable compliance with the law, are illegal. 41–176

55. Persons or associations of persons locating or entering coal lands in the District of Alaska under the act of April 28, 1904, amendatory of the act of June 6, 1900, are required to possess the qualifications of persons or associations making entry under the general provisions of the coal land laws of the United States, and are subject to the same restrictions and limitations. 41–176

56. While the amendatory act of April 28, 1904, is construed by the land department in connection with the coal land law of Alaska theretofore existing, yet if it be regarded as an entirely independent expression of the will of Congress, and as constituting all the law applicable to Alaska coal lands, its provisions will not justify a holding that an association of 33 persons is authorized to acquire 5,250 acres of public coal lands. 41–176

57. The provisions in the acts of May 14, 1898, and March 3, 1903, extending the homestead laws to the Territory of Alaska, that no entry shall be allowed extending more than 160 rods along the shore of any navigable water, and that along such shore a space of at least 80 rods shall be reserved from entry between claims, have no application to mining claims asserted under the general mining laws as extended to Alaska. 43–120

58. The discovery of an outcrop of coal upon a tract of land does not constitute the opening and improving of a mine thereon within the meaning of section 1 of the act of April 28, 1904, providing "that any person or association of persons qualified to make entry under the coal land laws of the United States, who shall have opened or improved a coal mine or coal mines on any of the unsurveyed public lands of the United States in the District of Alaska, may locate the lands upon which such mine or mines are situated," etc. 43–305

59. No right of location and entry under the act of April 28, 1904, is acquired by merely discovering an outcrop of coal, staking the claim, recording the notice of location, and applying for patent. 43–305

60. Where a locator of coal lands in Alaska opened and improved a mine of coal upon his claim, and marked the boundaries thereof by permanent monuments as required by statute, and within one year filed notice of his location in the recording district as required by the act of April 28, 1904, his claim should not be held defective, in the absence of an intervening withdrawal or adverse claim, merely because notice was not filed in the local land office until after the expiration of one year from the date of the location. 43–368

61. The act of October 20, 1914, providing for the leasing of coal lands in the Territory of Alaska, does not accord to persons executing relinquishments of claims for coal lands thereunder, with a view to repayment of the purchase money, a preferential right to lease the relinquished lands, nor does it warrant the acceptance of a relinquishment containing a clause that the relinquishment is made on condition that the person relinquishing will be accorded a right to lease the relinquished lands. 44–9

62. The provision in the act of May 28, 1908, authorizing the consolidation of coal land locations in the Territory of Alaska under certain circumstances, contemplates only such valid and complete locations as had been in good faith made and maintained in accord-

ance with the provisions of the prior existing law of April 28, 1904; and does not operate to validate or cure prior locations which were defective or invalid because of failure to open or improve mines, erect monuments, or to prepare and file notice of location as required by the law in force at that time. 45–56

63. Under the coal-land laws applicable to the Territory of Alaska work done merely for prospecting purposes, and not with the purpose or design of actually mining and producing coal, does not meet the requirements of the statute and does not serve as a basis for a valid location. 45–57

64. Directions given that departmental regulations of July 7, 1913, 42 L. D. 213, be modified to conform to the views herein expressed. 43–120

65. The act of October 20, 1914, providing for the leasing of coal lands in Alaska, leaves existing and pending coal claims in Alaska in exactly the same status they occupied prior to said enactment, and does not revoke the presidential withdrawal in so far as it relates to such claims. 43–517

ALIEN

See CITIZENSHIP; NATURALIZATION.

1. Instructions as to rights of alien enemies who have declared intention to become citizens of the United States in regard to land entries. 46–272

2. An alien woman did not by virtue of being a resident of Arizona at the date of the admission of the State into the Union become a citizen of the United States. 43–436

3. Instructions of November 4, 1914, under act of October 17, 1914, concerning marriage of female citizen, a homestead claimant, to an alien. 43–444

4. A contest against a homestead entry, based upon the charge that the entryman was disqualified to make the entry because he was an alien, must be dismissed unless the contestant, upon whom is cast the burden of proof, substantiates the charge by convincing evidence. 49–639

ALLOTMENT

See ALASKA LANDS, II; HOMESTEAD, XIX; INDIAN LANDS, II; JURISDICTION, 48–643; NEW MEXICO, 49–281; SCHOOL LANDS, 46–396.

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See APPLICATION; CONTEST, 44–72, 180; 45–446; 47–37, 281; 48–166, 642; 51–183; ENTRY, 42–55; 44–72; OIL, GAS, ETC., LANDS. 48–218, 622, 655; 51–235, 267, 622; PATENT, 51–281, 335; PRACTICE; SCHOOL LANDS, 47–398; 48–192, 614.

1. Circular of July 10, 1915, governing amendment of entries under section 2372, Revised Statutes. 44–181

2. The mere fact that an applicant to amend under section 2372, Revised Statutes, as amended by the act of February 24, 1909, made his original entry under the enlarged homestead act, whereas the land to which he desires to amend has not been designated as subject to entry under that act, but is subject to entry under section 2289, Revised Statutes, is no objection to allowance of the amendment, provided the character of the entry be changed to stand under that section and restricted to not more than 100 acres. 41–7

3. Where an application to make forest lieu selection fails because of defective base, amendment thereof by the substitution of new base can not be allowed in the face of an intervening withdrawal for forestry purposes. 43–146

4. Where clerical error in the description of the land desired is apparent upon the face of an application to enter public land it should not be rejected, but suspended to afford opportunity for amendment. 46–77

5. The rule that an application properly rejected, or fatally defective when presented, should not be allowed, on supplemental showing in the nature of amendment, to the prejudice of an intervening application made in due form by a qualified applicant, does not apply to an application, filed by one qualified to make desert-land entry, to amend to a tract subject to such entry and correctly described in the map accompanying the declaration. 46–77

6. The enactment by Congress of particular statutes making it mandatory for the Secretary of the Interior to grant amendments of entries under specified circumstances does not deprive him of the exercise of his supervisory power to grant amendments on other grounds not provided for by those statutes, and that power should be liberally exercised in cases where entries have been improperly applied for and allowed because of misinformation given to applicants. 48–380

7. A contest affidavit which does not contain the date and number of the entry or a correct description of the land and merely alleges that the homestead has been wholly abandoned for more than two years, does not meet the requirements prescribed by the Rules of Practice, and may not be amended after the entry is relinquished and a third party has applied to enter the land. 51–183

APEX

See Mining Claim, 51–464.

APPEAL

See Application, 44–205; 48–199; Notice, 50–5; Oil, Gas, etc., Lands, 48–215, 356; 50–395; Practice, III.

1. One is not estopped from exercising his right of appeal to the department because of prior statements made to an adverse party to the controversy to the effect that the decision of the Commissioner of the General Land Office, when rendered, would be accepted by him as final. 50–5

2. The rule that, where an appeal is taken from an order of dismissal of an application to contest, service of notice of the appeal upon the entryman is not required, does not apply to appeals from the rejection of applications to make entry or for prospecting permits because of conflict with previously allowed entries or permits; in the latter class of appeals, service of notice upon the entryman or permittee is compulsory. 50–496

APPEARANCE

See Practice, 42–608.

APPLICATION

See Coal Lands, 45–513; 48–29, 188, 226; 50–318, 501; Contest; Desert Land, 41–319, 603; 42–397; 50–135, 184; Fees, 50–177; Homestead, 45–34, 219, 557, 593; Indian Lands, 44–229, 230; 46–15; 48–362; Mining Claim; Oil, Gas, etc., Lands, 50–201, 213, 339, 395, 409, 492; Repayment, 49–344, 533; 50–589; School Lands, 46–185, 494; 49–213; Water Power, 48–197, 563.

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2. Circular of September 8, 1914, requiring applications to enter to be executed not more than 10 days prior to filing. 43–378, 467

3. Instructions of December 9, 1914, holding circular of September 8, 1914, concerning execution of applications, not applicable in Alaska. 43–467

4. Regulations of January 9, 1918, modifying regulations of September 8, 1914 (43 L. D. 378), regarding applications filed more than 10 days after their execution. 46–278

5. Suggestions of August 23, 1915, to United States commissioners and

judges and clerks of courts of record, under section 2294, Revised Statutes, concerning execution of applications, etc. 44–350

6. Instructions of July 21, 1925, procedure upon nonmineral applications filed subsequent to applications for prospecting permits and leases; instructions of October 6, 1920, superseded so far as in conflict. (Circular No. 1021.) 51–167

7. Instructions of September 17, 1925, procedure upon nonmineral applications filed subsequent to applications for prospecting permits and leases; Circular No. 1021, modified. (Circular No. 1031.) 51–202

8. Where an alien settler declared his intention to become a citizen of the United States on the same day he filed his application to make homestead entry for the land settled upon, the Land Department will not inquire as to the particular hour of the day such declaration was made, with a view to ascertaining whether it was prior or subsequent to the hour of filing of the application to enter. 41–316

9. No such right is acquired by a mere application to make homestead entry as will, in event of the death of applicant, descend to his widow or heirs, or that can be disposed of by will; nor is there any authority of law for the allowance of entry, in such case, in the name of the deceased applicant. 41–510

10. The rule that no application to enter shall be received until proper notation of the cancellation of a prior entry is made upon the records of the local office was adopted for administrative purposes and designed primarily for the protection of the rights of contestants, and will not be applied with the same strictness in cases solely between the Government and an entryman or an applicant for entry. 43–263

11. Any question as to the preference right of a successful contestant to make entry of the land in controversy can only arise in connection with an application by contestant to exercise such right, and can only be raised by some one asserting a superior right to enter the land. 42–64

12. It is no objection to an application and the accompanying affidavits that they were executed while the land applied for was embraced in an uncanceled entry or was not at the time open to entry, if in fact the land was then about to be released from the prior entry or was about to be opened under Government instructions. 43–313

13. Affidavits in support of applications to enter filed on and after October 1, 1914, must be executed within 10 days prior to the filing of such applications in the local land office. 43–313

14. Where clerical error in the description of the land desired is apparent upon the face of an application to enter public land, it should not be rejected, but suspended to afford opportunity for amendment. 46–77

15. Where public lands withdrawn from entry or other disposition are applied for under the terms of any public land act, the application will be rejected, unless it comes within the terms of Circular 324 of the General Land Office. (43 L. D. 254.) 16–31

16. The rule that an application properly rejected, or fatally defective when presented, should not be allowed, on supplemental showing in the nature of amendment, to the prejudice of an intervening application made in due form by a qualified applicant, does not apply to an application, filed by one qualified to make desert-land entry, to amend to a tract subject to such entry and correctly described in the map accompanying the declaration. 46–77

17. Where the rights of two or more persons to a tract of public land are equal, by virtue of simultaneous settlement thereon at a time when the land is subject to settlement, as distinguished from rights acquired

merely as the result of applications simultaneously filed, the tract should not be disposed of by lot but by an equitable division thereof, saving to each settler, as far as practicable, his improvements. 46–169

18. Where two or more conflicting applications to make entry are received in the same mail, the application first taken up, numbered, and entered on the records, in the regular course of business, is entitled to precedence, notwithstanding the fact that it may not have been the first to have been executed. 48–269

19. An applicant for relief under the act of January 27, 1922, must exhaust his claim in one application unless the lands applied for lie in two land districts, in which event the practice will be in accordance with instructions of September 22, 1916. (45 L. D. 486.) 50–636

20. Payment of taxes upon vacant and unoccupied public land, unaccompanied by *bona fide* occupation and improvement, will not defeat the allowance of a valid application filed under the public land laws. 51–451

II. Homestead

21. Instructions of January 12, 1921, distinguishing applications under enlarged homestead and stock raising laws. 47–629

22. By the filing of an application to make homestead entry of land properly subject thereto the applicant acquires a right which upon his death prior to allowance of entry descends to his widow or heirs, who may make entry and perfect title by proper cultivation for the required period without actual residence on the land. 43–229

23. By the filing of a homestead application in all respects proper and complete the applicant acquires a right which upon his death prior to allowance of entry descends to his heirs; but no such right is acquired by the filing of an application incomplete because not accompanied by the requisite fee and commissions, as will descend to the heirs of the applicant in event of his death prior to payment of such fee and commissions. 45–173

24. Accompanied by relinquishment. See RELINQUISHMENT. 42–117

25. A homestead application should not be rejected because of conflict with a pending Indian allotment application, but should be received and suspended to await final action on the allotment application. 44–21

26. Where a homestead application is rejected on the ground that the land was not subject to entry, an appeal entitles the applicant only to a judgment as to the correctness of that action at the time it was taken, and does not segregate the land from other appropriation if it in the meantime becomes subject to entry. 44–205

27. An appellant, whose homestead application has been rejected because the land is segregated by the entry of another, is entitled only to a judgment as to the correctness of the rejection, and any question as to the validity of the existing entry is not to be considered. 48–199

28. A homestead application should not be allowed after the lapse of a considerable time from the filing thereof without a showing on the part of the applicant of his then qualifications to enter. 44–226

29. Where a homestead application is filed for a tract classified as timber land, accompanied by a petition for reclassification, which application is rejected because of failure to tender one-fifth of the purchase price, and applicant appeals therefrom, subsequent instructions directing the rejection of all applications for lands so classified will prevent the applicant from securing the suspension of such application by thereafter depositing the required payment of purchase money. 47–35

30. A homestead application filed for land subject thereto, accompanied by the required showing and payment, has the segregative effect of an entry,

and when allowed all rights thereunder relate back to date the application was filed. 47–321

31. The act of March 1, 1921, which amended section 2294, Revised Statutes, by permitting incapacitated discharged soldiers, sailors, and marines of the United States who served during the war with Germany to submit proofs upon homestead entries initiated by them prior to November 11, 1918, outside of the land district or county in which the lands are located, did not contemplate making any relaxation of the previously existing law with reference to the execution of initial applications to make entry. 49–620

III. Desert Land

32. Upon rejection of a desert-land application the money paid therewith should not be covered into the Treasury, but should be returned to the applicant. 42–397

33. A declaration and map are alike required by statute of an applicant to make desert-land entry. 46–77

34. If part of the land embraced in a desert-land application is subject to entry and part is not, the application should not be rejected in its entirety, but should be allowed as to the land subject thereto. 42–397

IV. Miscellaneous

35. An entry for national forest lands under the act of June 11, 1906, allowed upon an application prematurely filed, and defective because not executed before a qualified officer, is not void, but merely voidable, and all defects are cured by the subsequent filing of a properly executed supplemental application. 48–199

36. Paragraph 30 of the regulations of November 30, 1908, provides that after the filing of a timber and stone application no other application under any public land law shall be received for the land until the timber and stone application has been finally disposed of adversely to the applicant; and no rights are acquired under a homestead application received and filed contrary to such regulation. 41–510

37. As a general rule the filing of an application under the timber and stone act exhausts the applicant's right; but where failure to consummate the first application by purchase is due to no fault or negligence on the part of the applicant, the filing of a second application under that act may be permitted. 44–539

38. The regulations of May 22, 1914 (43 L. D. 254), are without application where land is restored to the public domain as the result of relinquishment under section 1 of the act of May 14, 1880 (21 Stat. 140). 46–372

APPROXIMATION

See HOMESTEAD, XII; LIEU SELECTION, 49–161; RAILROAD LAND, 46–279; SCHOOL LANDS, 46–374.

1. Instructions of March 8, 1913, under the Spaeth decision, respecting the application of the rule of approximation in the location of soldiers' additional rights. 41–490

2. Instructions of July 2, 1913, governing application of the rule of approximation to soldiers' additional locations. 42–208

3. Instructions of April 11, 1914, concerning approximation in location of soldiers' additional rights. 43–219

4. Instructions of June 24, 1919, abolishing approximation as applied to soldiers' additional homestead entries. (Circular No. 648.) 47–205

5. Instructions of August 22, 1919, changing date for abolishing approximation of soldiers' additional entries. (Circular No. 655.) 47–206

6. The rule of approximation as applied to entries under the public land laws is merely a rule of administrative expediency and is not a right. 41–386

7. The right of additional entry accorded by section 6 of the act of March 2, 1889, is for such an amount of land as "added to the quantity previously so entered by him shall not exceed 160

acres"; and one who made an original homestead entry for 20 acres is not entitled, by invoking the rule of approximation, to make an additional entry under said section for 160 acres, and so acquire in the aggregate 180 acres. 41–386

8. One who made homestead entry for less than 160 acres can not, by making additional entry and invoking the rule of approximation, be permitted to secure a greater area of land in the aggregate than he might have embraced in his original entry. 41–391

9. The rule of approximation announced in George E. Lemmon (36 L. D., 417), as applicable to locations of soldiers' additional rights, is recalled and vacated, and hereafter no approximation will be allowed in the location, by an assignee, of two or more such rights on one body of land. 41–487, 489, 490

10. Soldiers' additional locations made prior to the decisions in the Spaeth case may be adjudicated under the rule regarding approximation in force at the time of such locations, or under the rule herein established, at the applicant's election. 43–172

11. Approximation will be permitted in the location of an entire and undivided soldiers' additional right, whether located singly or in combination with other additional rights; but where an additional right has been divided, only one application of the rule of approximation will be permitted under that right; and no distinction will be made in applying this rule as to rights located singly or in combination with other rights. 43–172

12. Only one application of the rule of approximation will be allowed to any one soldiers' additional right; and where several rights or parts of rights are used in the same location, some of which have already had the benefit of the rule, approximation will only be allowed to an amount not greater than the area of that part of the consideration which has not had the benefit of approximation. 44–492

13. The rule of approximation permitted in entries under the homestead and other public land laws providing for the disposal of nonmineral lands is equally applicable to placer mining locations and entries upon surveyed lands; but in dealing with placer claims the rule should be applied on the basis of 10-acre legal subdivisions. 42–453

14. The rule of approximation is applicable to selections by the Northern Pacific Railway Co. under the act of July 1, 1898. 43–534

15. In applying the rule of approximation to additional homestead entries, an excess area contained in a perfected original entry should be eliminated from consideration, except in computing the total acreage applied for. 46–243

16. Although payment was made for an excess area in the original entry, upon making an additional entry the applicant must pay for any excess over the approximate area he was qualified to enter. 46–244

17. A departmental regulation issued pursuant to the act of April 21, 1904, declaring that the rules of approximation obtaining in other classes of entries will be observed in effecting the exchange of lands under that act, does not entitle a selector thereunder to invoke the benefits of the rule as a matter of right, inasmuch as the rule of approximation, being purely an administrative invention of equitable purpose, not founded upon any law, may with impunity be modified, suspended, limited in its operation, or abrogated altogether, if the proper execution of the laws calls for such action. 49–161

18. Assumption of authority by the Land Department to extend or limit the application of the rule of approximation in each particular case to satisfy equities or to prevent its abuse, is not a basis for a charge of the exercise of arbitrary power or disregard of law. 49–164

19. An oil and gas permittee may invoke the rule of approximation in order to conform his selection of the 5 per cent royalty area to legal subdivisions in fulfillment of the requirement of section 14 of the act of February 25, 1920, but, where that rule can not be applied, the selection of aliquot parts of regular subdivisions may be permitted. 51–310

AREA

See DESERT LANDS; HOMESTEAD.

1. An additional entry under section 3 of the enlarged homestead act of February 19, 1909, can not be allowed where the additional lands applied for, together with the lands embraced in the original entry, exceed 1½ miles in length. 41–282

2. The provision in the act of August 30, 1890, limiting the amount of land that may be acquired by one person under the agricultural public land laws to 320 acres, will prevent one who has of record an entry made under the enlarged homestead act for 320 acres, or its equivalent, from making entry under the desert land law. 41–283

ARID LANDS

See DESERT LAND; RECLAMATION; RESERVOIR LANDS.

1. Regulations of January 12, 1920, irrigation of arid lands in Nevada. (Circular No. 666.) 47–310

2. Instructions of March 25, 1924, irrigation of arid lands in Nevada, paragraph 7 (a), Circular No. 666, amended. 50–333

ARIZONA

See INDIAN LANDS, 49–421; RAILROAD LANDS, 49–451; SCHOOL LANDS, 49–611; 50–528; SCRIP, 49–146

ARKANSAS SUNK LANDS

1. Circular of January 2, 1914, containing information to settlers and entrymen on St. Francis River sunk lands. 43–21

2. Circular of June 16, 1914, setting forth the status of the St. Francis River sunk lands. 43–275

3. Circular of July 24, 1915, defining status of St. Francis River sunk lands. 44–207

ASBESTOS

See INDIAN LANDS, 50–672.

ASPHALT LANDS

See OIL, GAS, ETC., LANDS.

1. Regulations of March 20, 1915, under act of July 17, 1914, concerning agricultural entries of asphalt lands. 44–32

ASSIGNMENT

See DESERT LANDS, IV; MINING CLAIM, 49–508; OIL, GAS, ETC., LANDS, XI; RECLAMATION, IV.

1. An assignment of a desert-land entry to one who is qualified to make an entry of that character is not rendered invalid or ineffective because he holds under a transfer from a mesne assignor who is not so qualified, notwithstanding that section 2 of the act of March 28, 1908, declares that assignments to disqualified persons and associations shall not be allowed or recognized. 50–139

2. Where a desert-land entry is assigned to several individuals, and there is no evidence to show that the assignees have formed a union or organization for the prosecution of some enterprise, such transfer is not to be construed as an assignment to an association within the prohibition of section 2 of the act of March 28, 1908. 50–139

3. An irrevocable power of attorney to make a change of entry under the act of January 27, 1922, whereunder the agent is authorized to make a selection and to transfer the land after the issuance of patent, constitutes an assignment of the right or claim, and

is in violation of the second proviso to that act, but selections may be made by an agent acting under an ordinary power of attorney. 50–390

ASSOCIATIONS

See Coal Lands, 51–416; Mining Claim, 51–62; Oil, Gas, etc., Lands, 51–242, 299.

ATLANTIC & PACIFIC RAILROAD CO. GRANT

See Small Holding Claims.

ATTORNEY

See Agent; Application.

1. Regulations of December 6, 1912, governing recognition of attorneys and agents to practice before the Interior Department. 41–439

2. Circular of April 9, 1915, amending Rule 87 of Practice, concerning admission of attorneys to practice. 44–114

3. Circular of May 22, 1915, reprinting circular of December 6, 1912, governing recognition of attorneys to practice. 44–120

4. Laws and regulations governing the recognition of attorneys, etc., representing claimants before the department and its bureaus. 46–206

5. Instructions of April 16, 1923, reinstatement of canceled entries; recognition of agents and attorneys; paragraph 8, regulations of April 20, 1907, amended. (Circular No. 889.) 49–535

6. Section 558 of the Code of the District of Columbia, as amended by the proviso to the act of June 29, 1906, which prohibits the administering of oaths by notaries public in connection with matters pending before any of the departments of the United States Government in which they are employed as counsel, attorney, or agent, or in any way interested, applies to all such persons, whether residing in the District of Columbia or elsewhere. 50–17

BACA FLOAT NO. 3

See Private Land Claim, 51–516.

BLACKFEET INDIAN LANDS

See School Lands, 47–568; Town Sites, 47–213.

1. Instructions of September 22, 1920, school sections, Blackfeet Indian Reservation. 47–568

BOARD OF LAND COMMISSIONERS

See Private Land Claims.

BONDS

See Coal Lands, 48–175, 243, 439; Oil, Gas, etc., Lands, 48–112; 49–110; Timber Cutting.

1. The requirement in the act of December 29, 1916, that a bond be furnished as security of compensation for damage to the permanent improvements of a stock-raising homestead entryman is applicable only to persons acquiring rights to mine and remove the mineral deposits, but not, as does the act of July 17, 1914, to one who has been granted merely a prospecting permit. 50–510

BOUNDARIES

See Oil, Gas, etc., Lands, 48–183; 50–690; Right of Way, 51–27; Settlement, 45–461, 462; Settler, 46–259; Survey, 46–301; 48–87, 88; 49–548, 583; 50–216, 402, 679.

1. In matters of boundaries it is a general rule that monuments, natural or artificial, prevail over calls for course, distance, or quantity. 51–822

BOUNTY LAND

See Warrants.

BURDEN OF PROOF

See CONTEST, 49–639; CONTESTANT, 42–10; 45–453; EVIDENCE; MINERAL LAND, 45–464; 46–85, 435; 50–277; MINING CLAIM, 49–588; 51–464; OIL, GAS, ETC., LANDS, 46–46, 435; 48–155; PATENT, 50–242; PRACTICE, 41–513; 47–185; RAILROAD GRANT, 43–546; 45–25; SCHOOL LANDS, 49–212, 436; 50–219, 231, 516; SWAMP LANDS, 47–366; 48–20.

1. The Government is not required to establish the mineral character of land as of the date of the filing of a State selection, if the selection was incomplete when filed; and the inclusion of the land within a petroleum reserve prior to its completion casts the burden of proof as to its nonmineral character on the State and its transferee. 49–449

BUREAU OF RECLAMATION

See OFFICERS, 50–175; RECLAMATION.

CALIFORNIA

See SCHOOL LANDS, 44–27, 120; 48–418; SURVEY, 49–663; SWAMP LANDS, 49–665.

1. Section 1 of the act of July 23, 1866, confirming to the State of California lands selected in satisfaction of its grants and disposed of to purchasers in good faith, is by its terms applicable only to lands theretofore selected and sold by the State. 42–296

CAMP McGARRY LANDS

See RESERVATION, 48–41.

CANADIAN BOUNDARY STRIP

See HOMESTEAD, 43–552.

CANALS, DITCHES, AND RESERVOIRS

See PATENT, 42–396; 45–596, 597; RECLAMATION, 42–157; 43–263; RIGHT OF WAY, V.

CAREY ACT

See CONTEST, 42–205; STATE IRRIGATION DISTRICTS.

1. Regulations of September 7, 1912, governing temporary withdrawals under the Carey Act. 41–256

2. Regulations of June 17, 1914, amending paragraph 9 of regulations of April 25, 1910, concerning temporary withdrawals under Carey Act. 43–281

3. Regulations of November 23, 1916, concerning eliminations from applications for segregations under the Carey Act and acts amendatory thereof. 45–535

4. Instructions of December 10, 1920, preference right on restored Carey Act lands. (Circular No. 731.) 47–605

5. In the segregation of unsurveyed lands under the Carey Act it is not necessary that entire townships be selected or that the outer boundaries of the withdrawn areas be marked and defined on the ground by artificial posts or monuments; it is sufficient if the tracts of unsurveyed lands be designated by a metes-and-bounds description connected at some point with a bearing to a corner of the public surveys, a monument, or a natural object in the neighborhood, supplemented by a statement of the probable section, township, and range in which they will fall when surveyed. 41–649

6. An application for segregation of lands under the Carey Act while pending precludes other disposition of the lands; and applications to enter lands embraced in pending selections under that act will not be received and suspended to await final action upon such selections, nor will any rights be recognized as initiated by the tender of such applications. 41–379

7. There is no statutory right of contest against a Carey Act segregation list; and the filing of a contest against such a list will not prevent the Secretary of the Interior granting

the State an extension of time, under section 3 of the act of March 3, 1901, within which to effect reclamation of the land involved. 42–205

8. The Land Department has authority to require a State to show that water is available and has been duly appropriated for the reclamation of all public lands sought to be segregated and acquired under the Carey Act; but has no authority to require relinquishment of water appropriation under State laws in excess of the amount necessary to irrigate the lands segregated under that act, all questions concerning such appropriation being within the jurisdiction of the State. 42–505

9. The relinquishment of a Carey Act selection is not effective until approved by the Secretary of the Interior, and the lands covered thereby are not subject to disposition under either the act of June 6, 1912, or the law as it existed prior thereto, whichever may be found applicable to the facts shown. 43–196

10. The relinquishment of a Carey Act selection is not effective until approved by the Secretary of the Interior, and the lands covered thereby are not subject to disposition under the public land laws until notation of the approved relinquishment upon the records of the local land office. 43–341

11. An unconditional relinquishment by a State of lands included within a Carey Act selection, accompanied by an application for the same lands as part of another Carey Act selection in the interest of other parties and contemplating a different system of irrigation, will not prevent the attachment of a valid outstanding homestead settlement right duly asserted. 46–189

12. The listing of lands under a Carey Act selection, although amounting to a segregation, does not confer the status of vested equitable title, and until the right to title is fully earned, the lands may be withdrawn or the mineral deposits therein may be disposed of by the United States. 48–160

13. The preference right accorded to an entryman under State Carey Act laws by the act of February 14, 1920, to make an entry under applicable public land laws, descends to the widow of one who, having died prior to the exercise of the right, had in his lifetime been declared by the Land Department to be entitled thereto by reason of his settlement upon and occupancy of the land. 50–647

14. Equitable title to lands selected under the Carey Act vests when the State has fully complied with the law and regulations and has completed its proofs in connection with its list for patent, but the power of the Land Department to inquire into the extent and validity of the rights claimed against the Government does not cease until the legal title has passed. 51–406

CARSON NATIONAL FOREST

See PRIVATE CLAIM, 51–75.

CEMENT

See RAILROAD GRANT, 43–325.

CEMETERY

See RAILROAD GRANT, 43–390.

1. The Land Department will take notice that title to property of the Catholic Church rests in the bishop or archbishop as a corporation sole under the polity of the church, and that such officer has the power and authority to take and hold land for cemetery purposes for the members of his church. 40–74

2. Noncontiguous tracts are not subject to entry under the act of March 1, 1907, for cemetery purposes. 40–74

3. Land used principally as a church site, and only incidentally as a cemetery, subsidiary to its use for church purposes, is not subject to entry as a cemetery under the act of March 1,

1907; but where used principally and substantially as a whole for cemetery purposes, and only incidentally and secondarily to a minor extent for church purposes, such latter use will not work a forfeiture thereof under said act. 40–74

4. There is no existing law authorizing the issuance of patent for lands within an Indian reservation, not attached to any particular church organization, but used in part by it in conjunction with the Indians for cemetery purposes. 51–419

CERTIFIED COPIES

1. Regulations of October 17, 1912, under act of August 24, 1912, concerning certified copies of records. 41–333

2. Order of July 14, 1915, concerning certified copies of homestead entry papers. 44–194

CERTIORARI

See Supervisory Authority.

1. Rule 79 of Practice, suspending action for 20 days from service of notice of a decision of the Commissioner of the General Land Office denying the right of appeal, with a view to affording the party against whom the decision was rendered an opportunity to apply for certiorari, operates merely as a supersedeas for the period of 20 days, and is not a limitation upon the power of the Secretary of the Interior to grant an application for certiorari filed after the expiration of that period. 41–136

2. The supervisory authority of the department may properly be invoked by certiorari where a substantial failure of justice, due to action taken by a subordinate tribunal, would otherwise occur. 46–183

CHEYENNE AND ARAPAHOE SCHOOL LANDS

See Indian Lands.

CHEYENNE AND STANDING ROCK LANDS

See Indian Lands, 46–66; 48–453; Homestead, 49–131.

1. Regulations of February 27, 1920; sale of Cheyenne River and Standing Rock lands. (Circular No. 670.) 47–340

2. Instructions of April 20, 1921; extension of time for payments on Cheyenne River and Standing Rock lands. (Circular No. 751.) 48–80

3. Instructions of May 16, 1925, as to extensions of time for payments on Cheyenne River and Standing Rock Indian lands. (Circular No. 1007.) 51–146

4. An entryman whose invalid homestead entry for ceded Cheyenne River Indian lands was validated by the act of January 27, 1921, is not relieved by that act, either expressly or by implication, from payment of the unpaid installments of the purchase price, in the form and manner specified in the act of May 29, 1908, as subsequently amended, under which the entry was made. 48–453

CHIPPEWA INDIAN LANDS

See Indian Lands, 44–524, 531, 552; 50–434.

1. Instructions of March 26, 1919; Chippewa Indian lands, Minnesota, isolated tracts. 47–57

2. Instructions of June 20, 1923, Chippewa agricultural lands, Minnesota. (Circular No. 898.) 49–640

3. Regulations of February 27, 1926, sale and removal of pine timber on Chippewa Indian lands, Minnesota. (Circular No. 1052.) 51–388

4. The acts of May 18, 1916, and February 14, 1920, authorize the Secretary of the Interior to collect certain fixed fees upon the approval of a will of an Indian allottee, and the fees prescribed by law become due and collectible upon approval of the will of a Chippewa Indian devising lands held under a restricted fee patent issued

pursuant to the treaty of September 30, 1854.) 48–472

5. Approval by the Secretary of the Interior, under authority conferred by the act of February 24, 1913, of a will by a Chippewa allottee, devising Indian lands held under a restricted fee patent issued pursuant to the treaty of September 30, 1854, does not remove the restrictions against alienation of such lands, imposed by the provisions of that treaty. 48–472

CHUCKAWALLA VALLEY LANDS

See DESERT LANDS, 45–86, 24.

1. In determining the statutory lifetime of desert-land entries embracing lands in the Chuckawalla Valley in the State of California, it is necessary to note the extensions granted by the acts of June 7, 1912, March 4, 1913, and April 11, 1916; and the further fact that such period does not run during any suspension effected by the withdrawal of land for the purpose of resurvey. 47–84

CIRCULARS AND INSTRUCTIONS

See TABLES OF, IN PART II.

CITIZENSHIP

See ALIEN; CONTEST, 45–205; 49–639; HOMESTEAD, 41–598; 42–324, 338; 43–116; INDIAN LANDS, 48–567; NATURALIZATION; OIL, GAS, ETC., LANDS, 48–216; 49–613; PUBLIC SALE, 43–90, 220; RECLAMATION, 48–235; 50–4.

1. Instructions of August 27, 1913, concerning proof of citizenship in commutation proof under act of June 6, 1912. 42–338

2. Instructions as to rights of alien enemies who have declared intention to become citizens of the United States in regard to land entries. 46–272

3. Regulations of February 20, 1918 (Circular No. 589), regarding limitation on age of declaration of intention. 46–297

4. Regulations of May 14, 1918, regarding acceptance and return of citizenship papers. (Circular No. 599.) 46–382

5. Instructions of May 29, 1918, modifying Circular No. 599, regarding citizenship papers. 46–399

6. Instructions of October 11, 1922, citizenship of married women. (Circular No. 857.) 49–316

7. Instructions of January 31, 1923, homestead rights of citizens of the United States who served in the allied armies during the World War. (Circular No. 871.) 49–429

8. Instructions of May 1, 1925, evidence of citizenship; Circular No. 599, superseded. (Circular No. 1005.) 51–134

9. An alien woman did not by virtue of being a resident of Arizona at the date of the admission of the State into the Union become a citizen of the United States. 43–436

10. Since the terms of the enabling acts under which different States entered the Union vary, the enabling act of the particular State concerned must be looked to in order to determine whether one has become a citizen of the United States by virtue of having voted or resided in that or another State. 46–320

11. Neither voting in one of the States nor residence in New Mexico at the time of the admission of the latter into the Union operates of itself to confer United States citizenship. 46–320

12. In view of the conflicting decisions of the Federal courts, the department declines in this case to pass upon the question whether a declaration of intention to become a citizen, filed prior to the naturalization act of June 29, 1906, must, in view of the provisions of that act, be consummated within seven years from the date that act became effective, or whether, if not so consummated, it continues in force and effect after the expiration of that period. 45–453

13. By the express terms of the statute, homesteads are limited to citizens of the United States, so that the department is without authority of law to approve final proof submitted by a homestead entryman where such citizenship has not been established. 46–320

14. The Land Department is not charged with a duty to inquire into the regularity of naturalization proceedings, and an order of court, apparently regular, admitting to citizenship, will be treated as conclusive and not subject to collateral attack. 46–419

15. The prior ownership of a homestead entry in Canada does not render illegal and void a declaration of intention to become a citizen of the United States; nor does the return of declarant to the Dominion for the purpose of correcting an error in the description of the land embraced in such entry invalidate his declaration theretofore duly executed and filed. 47–90

16. A child born in the United States of Canadian parents domiciled here becomes at birth a "citizen" of the United States under the first clause of the fourteenth amendment to the Constitution, and one thus born an American citizen retains his citizenship, notwithstanding that he moves, during his minority, with his parents, to the country of their nativity, unless he voluntarily expatriates himself subsequently to his attaining his majority. 48–66

17. A Canadian woman, married to a citizen of the United States, domiciled in the Dominion of Canada, becomes herself a citizen of the United States, although not residing here, and as such is entitled to submit proof under the enlarged homestead act of February 19, 1909, as heir and next of kin of an intestate deceased entryman, who prior to his death had declared his intention to become a citizen. 48–66

18. Conviction of the crime of manslaughter which, by a State statute, suspends the enjoyment of the rights and privileges of citizenship until formally restored, is not a bar to the making of a homestead entry, inasmuch as Congress has never declared it to be a disqualification under the homestead laws. 48–199

19. An alien who, after declaring his intention to become a citizen of the United States, made a homestead entry, did not forfeit his citizenship qualification as an entryman by claiming exemption from military service as an alien under the selective service act of July 9, 1918, if he was a citizen of a country neither neutral nor enemy and, therefore, not exempted by the act, where, although having subsequently been denied citizenship, his declaration had not been withdrawn or canceled. 48–287

20. The fact that a declaration of intention to become a citizen of the United States, because of its age and certain errors contained therein, was not sufficient upon which to predicate final citizenship, does not disqualify the declarant as a homestead entryman, where the declaration was *prima facie* good at the time of making entry and a new declaration had been filed after the petition for citizenship had been denied. 48–287

21. Naturalization in a foreign country of a citizen of the United States is an act of expatriation which makes him a citizen of that country, and the citizenship of his wife, residing with him therein, is merged with that of her husband, if married prior to the passage of the act of September 22, 1922, irrespective of whether the expatriation occurred before or after the marriage. 50–205

22. Where an American-born woman who has lost her citizenship by marrying a foreigner returns to this country and procures a divorce she thereby regains her American citizenship and becomes qualified in that respect under the homestead laws, without the necessity of naturalization. 45–1

23. United States citizenship lost by a woman as the result of marriage and residence in a foreign country with a

citizen thereof before the passage of the act of September 22, 1922, can thereafter be restored, if at all, only by naturalization as prescribed by that act. 50–205

CLAIMS FOR DAMAGES

See Bonds, 50–510; Coal Lands, 50–501; Florida, 48–195; Oil, Gas, etc., Lands. 50–192, 369, 383; Right of Way, 49–188; Survey, 48–195; Timber Trespass, 49–484.

1. Instructions of May 7, 1920, as to claims for damages on projects. 47–392

2. Instructions of December 29, 1923, rule for fixing the measure of damages in innocent timber trespass cases. (Circular No. 909.) 50–223

3. Diversion by the United States Reclamation Service of the waters of a lake, thereby depriving meadow land of its moisture derived from subirrigation, even though the land was not contiguous to the meander line of the lake, constitutes a valid claim for damages within the contemplation of the act of March 3, 1915, which authorizes payment of damages caused by reason of the operations of the United States in the survey, construction, operation, or maintenance of irrigation works. 49–106

4. Where meadow land is damaged by the diversion of the waters of a lake, the landowner is not entitled to general damages to his remaining lands as incidental to the damage to the former, if the latter were not directly benefited by those waters prior to their diversion. 49–106

5. A State statute prescribing the period of time within which action may be initiated in its courts, has no application with reference to a claim asserted against the United States pursuant to a Federal statute, where the remedy is not sought in a tribunal of that State. 49–106

6. The prohibition contained in section 109 of the Federal Penal Code, act of March 4, 1909, against the prosecution of "any claim against the United States" has reference to a money demand and does not include claims involving the right and title to public land, but section 113 thereof is more general and inhibits the rendering of any service for compensation in connection with a matter or proceeding before any department wherein the United States is a party or is directly or indirectly interested. 49–500

7. In the settlement of cases against parties who have innocently, but wrongfully, taken timber from public lands in States which have not prescribed rules governing the measure of damages, the stumpage value, or the value of the timber in the standing trees, constitutes the full measure of damages that the Government is entitled to recover. 50–211

CLASSIFICATION OF LANDS

See Homestead, 45–110, 27, 197, 557, 585, 202; Oil, Gas, etc., Lands, 45–77, 494, 170.

1. Where a desert entry of more than 160 acres has been allowed for lands withdrawn for examination and classification with respect to coal value, the entryman will be required, under the provisions of sections 1 and 2 of the act of June 22, 1910, to amend his entry so as to reduce the area to 160 acres and to show that the application is made in accordance with and subject to the provisions and reservations of that act. 41–319

CLIMATIC CONDITIONS

See Residence, 42–89, 96, 143.

COAL LANDS

See Alaska Lands, IV; Confirmation, 41–616; Indian Lands, 46–118, 283; 48–440, 448, 567; 49–354; Railroad Grant, VII; Repayment, 44–583; 48–291, 292; 50–297, 298, 418, 429, 589, 602, 627; School Lands, 44–215, 348; 47–48; 48–11; 49–212, 213; 50–219, 516; Selection, 49–408, 522; Timber and Stone Act, 42–601; 44–48; 50–342; Words and Phrases Construed, 50–294, 501.

I. Generally

1. Instructions of May 23, 1912, under act of April 30, 1912, concerning isolated coal tracts. 41–30

2. Instructions of May 24, 1912, under act of April 23, 1912, relating to Alabama coal lands. 41–32

3. Paragraphs 18 and 19 of coal land regulations of April 12, 1907, amended. 41–100, 416, 417

4. Paragraphs 20, 21, and 25, regulations of April 12, 1907, vacated. 42–170

5. Instructions of October 30, 1913, amending rule 7 of circular of April 24, 1907. 42–474

6. Circular of February 29, 1916, extending time for payments on Fort Berthold coal lands. 44–575

7. Instructions of April 16, 1917, regarding disposition of surplus coal lands restored from Indian reservations. (Circular No. 547.) 46–79

8. Instructions of May 12, 1917, regarding coal entries on ceded Fort Peck Indian lands. 46–118

9. Circular of instructions of July 7, 1917, regarding coal land laws and regulations. 46–131

10. Acts of Congress passed subsequent to the Revised Statutes regarding coal lands. 46–145

11. Regulations of April 1, 1920, act of February 25, 1920. (Circular No. 679.) 47–489

12. Regulations of March 30, 1921, relative to coal prospecting permits in Alaska. 48–50

13. Instructions of August 16, 1921, amending Circular No. 679 of April 1, 1920, in regard to bonds with coal-land leases. (Circular No. 773.) 48–175

14. Instructions of October 31, 1921, relating to bonds with coal-land leases. (Circular No. 789.) 48–243

15. Instructions of November 17, 1921, construing the word "coal" as used in act of February 25, 1920. 48–300

16. Instructions of February 15, 1922, relating to bonds with coal-land leases, amending regulations and lease. (Circular No. 809.) 48–439

17. Instructions of March 24, 1922, relative to coal-mining permits in Alaska under section 10, act of October 20, 1914; Circular No. 491, amended. 48–597

18. Instructions of July 12, 1923, coal prospecting permits in reclamation projects. 49–646

19. Instructions of March 13, 1924, amending paragraph 8 of Circular No. 679, coal land regulations, as amended by Circular No. 809; paragraph 22 of Circular No. 679, amended. (Circular No. 922.) 50–320

20. The charge by a field officer of the Land Department against a coal-land entry that the claimant did not make the entry for his own use and benefit, but for the use and benefit of some coal company, designating the company by name, is sufficient to advise the claimant of the charge he is called upon to meet and, if proved, to warrant cancellation of the entry, notwithstanding the fact that the company so designated may not have been organized until subsequent to the date of the entry, where it appears that the entryman acted as a mere automaton, without interest in the entry, and was controlled by the agents and representatives of one who was the directing factor in the formation of the company designated in the charge as beneficiary of the entry. 41–295

21. In determining the character of public lands—whether coal or non-coal—the Land Department may take into consideration not only surface indications upon the particular land in question but the geological formation of and discoveries upon adjacent or near-by lands. 41–639

22. The fact that an entryman under a nonmineral public land law is so inexpert as to be unable to recognize existing mineral deposits upon the land, does not warrant the United States in permitting him to take mineral land under a nonmineral entry; and it is not necessary in order

to declare a tract mineral in character that personal knowledge of the existence of the mineral deposits be brought home to the entryman, if the presence of minerals be demonstrated. 41–639

23. Section 2351 of the Revised Statutes specifically authorizes the Commissioner of the General Land Office to issue all needful rules and regulations to carry the coal land laws into effect; and applicants and entrymen under such laws are charged with knowledge of the existence of regulations issued pursuant to such authority. 41–661

24. In case no contest, protest, or proceeding by the Government was commenced against an entry within two years from the date of the issuance of final receipt, the Land Department is thereafter without jurisdiction to inquire into the known coal character of the land at the date of final receipt, but must issue unrestricted patent upon the entry. 43–246

25. A classification of lands as coal is subject to supervision and review by the Secretary of the Interior. 45–494

26. The placer mining laws do not authorize the patenting of land with a reservation to the United States of the coal deposits therein. 51–437

27. The mere fact that lands contain deposits of coal is not sufficient to warrant their disposition under the coal land laws; but to make them subject to such laws they must contain workable deposits—that is, coal in such quantity and of such quality as would warrant a prudent coal miner or operator in the expenditure and labor incident to the opening and operation of a coal mine or mines on a commercial basis. 45–494

28. The fact that an applicant to purchase under the coal land laws may have trespassed by the removal of coal for the purpose of sale while the land applied for was embraced in an order of withdrawal does not of itself invalidate the application. 45–513

29. One whose coal land application was improperly allowed because at that time subject to an outstanding preferential right, will not be permitted to perfect such application by purchase and entry except upon making payment of the purchase price at the appraised valuation obtaining at the time the right of purchase became available to him. 46–102

30. Mandamus will not lie to compel the Secretary of the Interior to issue to the relators a patent for coal land which they entered when it was still unreserved, unsurveyed, and unclassified public land, although after its classification as coal land and appraisal they applied to purchase it and conformed to the requirements of sections 2347 and 2348, United States Revised Statutes, Compiled Statutes, 1913, sections 4659, 4660, which permit the entry of coal lands upon payment of prices per acre therein specified and give a preferential right of entry to persons who have opened and improved, and shall thereafter open and improve, any coal mine upon such lands, and shall be in actual possession of the same, where the Secretary's refusal to issue a patent to the relators was based upon the ground that not having opened a mine on the land until after its classification and appraisal, they would have to pay the appraised price of the land, and not the price fixed by the statute. 46–191

31. While an applicant under section 2347, Revised Statutes, is not compelled to pay the purchase price at the time of filing his coal land application, yet where such payment is so deferred under the authority of the regulations of July 17, 1917, and an increase in valuation occurs subsequent to application, but prior to actual tender and payment of the purchase money, the higher price will prevail. 47–43

32. A company which, under claim of right and in privity with the title asserted by the State, in good faith takes possession of and makes valuable improvements upon a portion of a

school section thereafter lost to the State because of adjudication that it was known coal land at the date of the school grant, may be protected by according to the State opportunity to select the land, exclusive of the coal deposits, under the act of April 30, 1912, for the benefit of the company. 47–58

33. A coal claimant's preference right of entry under section 2348 et seq., Revised Statutes, is essentially of the same legal character and status as a settler's right. 47–219

34. Coal deposits in land segregated from the public domain by entry and patent which is later annulled, is not subject to a preference-right claim or to the lawful possession of a coal claimant until its restoration is duly noted upon the records of the local land office. 47–219

35. In order to obtain a preference right under the coal land laws by opening and improving a mine, it is essential that the claimant operate under a definite design looking to actual production of coal; that the excavation be of a substantial character; and that the deposit disclosed be of such value as to warrant the conclusion that the land is coal in character. 47–395

36. Where a conflict arises between a coal-land application filed pursuant to section 2347, Revised Statutes, and an oil placer-mining location previously initiated, involving a tract of classified coal land, it must be held that said land is not subject to disposition under that statute as "vacant coal land of the United States not otherwise appropriated," if it is shown that the land was at the date of the filing of said application and continuously thereafter in the possession and occupancy of the mining locator, and that work thereon was prosecuted to a sufficient discovery of oil. 48–226

37. The action of Congress in authorizing the construction and operation by the United States of the Alaskan Railroad in effect created a legal easement with a corresponding servitude imposed on the adjoining land held by the grantor for support of the surface with the superimposed structures, and the road is entitled to lateral or adjacent support as well as to vertical or subjacent support from one who leases coal lands pursuant to the act of October 20, 1914. 48–443

38. A coal lease granted under the provisions of the leasing act of October 20, 1914, which is in terms restricted to the Territory of Alaska, is subject to the reservations contained in the act of March 12, 1914, authorizing the construction and operation of railroads by the United States in that Territory. 48–443

39. Section 13 of the Alaskan coal leasing act of October 20, 1914, provides that the possession of the lessee shall be deemed the possession of the United States for all purposes involving adverse claims to the leased property, and where questions arise as to the conflict of rights between a right of way grantee and the coal lessee, said disputes should be arbitrated in accordance with Article VII of the mining lease. 48–443

40. The act of February 25, 1920, does not award any preference right for military or naval service, and preferential consideration can not be given to applicants, as ex-service men with honorable discharges, in the granting of coal-land leases thereunder. 48–122

II. Entry

41. The fact that a coal entry by an individual was made for the benefit of a corporation does not affect the validity of the entry, provided the corporation and each of the persons in whose interest the entry was directly or indirectly made possess the requisite qualifications to make entry under the coal land laws. 41–337

42. Section 2347 of the Revised Statutes limits the amount of land that may be entered by an individual or association under the coal land

laws; and an individual or association, although never having exercised the right of entry, can not by procuring others to make entry for his or its benefit, acquire a greater area than authorized by said section. 41–616

43. Proceedings by the Government against a coal-land entry are not invalidated by reason of failure to serve notice thereof upon the first transferee, where he no longer has any interest in the claim and is under no liability to protect those to whom he has transferred. 41–616

44. Failure of an applicant to purchase under the coal land laws to make proof and payment within 30 days from the conclusion of the publication of notice of his application, as required by the regulations, subjects the application to rejection; and an entry erroneously allowed upon proof submitted after the 30-day period is subject to cancellation. 41–662

45. An agreement by a coal-land applicant to pay to another, out of the proceeds of the sale of the land after patent, the money advanced by such party to pay the purchase price, fees, etc., in connection with the entry, and in addition one-third of the balance remaining after making such repayment, being merely a promise to pay in case of sale, not enforceable against the land, is not in violation of the coal-land regulations requiring an applicant to make oath that the entry is made in good faith for his own benefit, and not, directly or indirectly, in whole or in part, in behalf of any other person or persons. 42–420

46. A mere moral obligation on the part of a coal-land applicant to share with another, who furnished the money with which to make the entry, whatever profits might accrue from the venture, is not, in the absence of any agreement or lien enforceable against the land, in violation of the coal-land regulations requiring an applicant to make oath that the entry is made in good faith for his own benefit, and not, directly or indirectly, in whole or in part, in behalf of any other person or persons. 43–221

47. The fact that a person once initiated a coal claim upon public land and failed to perfect the same does not necessarily disqualify him under the coal land law; but if it appear that good and sufficient reason existed for the abandonment of such claim his rights are not thereby exhausted. 43–221

48. The acts of one in taking and maintaining possession of a tract of public land and opening a mine of coal thereon, coupled with acts of the local officers in accepting his application to purchase, permitting publication and proof, and requiring payment of the purchase price, constitute an appropriation of the land, duly recognized and noted of record, sufficient to preclude the subsequent allowance of a homestead entry. 50–300

49. Equitable title to coal lands entered under section 2347 et seq., Revised Statutes, does not vest in the entryman until the laws and regulations shall have been fully complied with, including payment of purchase price, and until that time alienation of the lands is without lawful effect. 50–602

III. Declaratory Statement; Preference Right

50. One who makes a coal-land location, files declaratory statement therefor, and without sufficient cause abandons the same, is thereby disqualified to make a second location and filing. 41–177

51. A small amount of open-cut work, merely for prospecting purposes, does not meet the requirements of the coal-land laws conferring a preference right of purchase upon one who opens and improves a coal mine upon the public domain. 41–177

52. A second coal filing by the same person may properly be allowed where sufficient reason is shown for failure to perfect title to the tract embraced in the first filing. 41–337

53. Upon the timely presentation of an application to purchase coal lands the declaratory statement theretofore filed by the applicant becomes functus officio, so far as strangers to the land are concerned, and can not thereafter be made the object of contest proceedings. 41–275

54. Neither a coal declaratory statement nor application to purchase is an "entry" within the meaning of the act of May 14, 1880, and no preference right of entry can be secured by contest against the same. 41–275

55. The projection of underground workings from a tract of privately owned ground into an adjoining tract of public land, with a view to extracting the coal therefrom, such being the only feasible and practical method of opening up and mining the coal from such adjoining tract, followed immediately by the execution and filing of a declaratory statement giving notice of the extent of the coal lands claimed, constitutes the opening and improving of a mine within the meaning of the coal-land laws. 41–21

56. The expenditure of $5,000 required by section 2348 of the Revised Statutes to be made by an association of four or more qualified persons seeking to acquire title to 640 acres of coal lands is a condition precedent to the right to enter, but not a condition precedent to the right to file declaratory statement. 41–21

57. A qualified association upon opening and improving a mine, accompanied by actual possession, and filing declaratory statement, becomes possessed of the right to assert exclusive claim to 640 acres of coal lands; and by thereafter seasonably expending $5,000 in working and improving the mine, becomes invested with the right to apply for, pay for, and enter such lands. 41–21

58. The coal land laws authorize filings and entries thereunder only upon surveyed lands; and a coal declaratory statement for a tract of unsurveyed land described by metes and bounds must be rejected. 42–505

59. Upon expiration of the period allowed by the statute within which to make proof and payment for lands included within a coal declaratory statement, without action by the declarant, the declaratory statement expires by limitation of law; and subsequent action by Commissioner of the General Land Office holding the declaratory statement for rejection is unnecessary and without legal effect and furnishes no ground for appeal to the department. 43–479

60. Section 2349, Revised Statutes, does not require that a coal declaratory statement or notice setting up a preference-right claim must be filed within 60 days from the date that possession was first declared, but contemplates that the 60-day period begins to run at the time of the opening of a mine of coal and the commencement of improvements thereon, accompanied by actual possession of the land. 50–299

61. A coal declaratory statement which is not filed within 60 days from the accrual of a preference right as required by section 2349, Revised Statutes, but which is presented within the ensuing year, affords the declarant, in the absence of an intervening adverse right asserted at the time of the filing or other disposition of the land, the same security for the period specified in the statute as if it had been filed in time. 50–300

62. Mere prospecting for coal as preliminary to the opening of a mine does not constitute the commencement of improvements as that term is used in section 2349, Revised Statutes, and the period covered by such preliminary prospecting can not be regarded as falling within the 60-day period during which a coal declaratory statement is required to be filed. 50–592

63. Averments in a coal declaratory statement to the effect that the declarant had caused an open cut about 8 feet wide to be driven upon a vein of coal that was already exposed by a creek running through the land

"thereby opening and improving a vein of good merchantable coal about 7 feet thick," are too general and indefinite to establish the opening and improving of a mine of coal as of the date of the filing of the declaratory statement within the contemplation of the coal land laws. 50–592

IV. Withdrawals; Classification; Price

64. Regulations of November 15, 1912, authorizing classification and valuation of coal lands by 2½ or 10 acre tracts. 41–399

65. Instructions of November 15, 1912 (41 L. D. 396), vacated, and amendment added to paragraph 11 of the regulations of April 10, 1909 (37 L. D. 653), by instructions of November 15, 1912 (41 L. D. 399), canceled. 43–520

66. Regulations of February 20, 1913, concerning classification and valuation of coal lands. 41–528

67. The Land Department has full authority to ascertain, segregate, and classify coal areas of public lands in 2½ or 10 acre tracts, or multiples thereof, described as minor subdivisions of quarter-quarter sections or rectangular lotted tracts, where conditions are such as to render this course desirable and necessary; the minor subdivisional areas so segregated, classified, and described to be regarded and treated as legal subdivisions for the purpose of entry under the coal land laws, and the remaining noncoal area in the 40-acre subdivision being subject to disposal under appropriate laws. 41–396

68. The special provisions of section 2331 of the Revised Statutes and other special acts authorizing the entry and disposition of lands in smaller areas than the 40-acre unit or lot fixed by the general laws, are not applicable to coal lands; and the Land Department is without authority to classify and segregate coal areas of public lands in less than legal subdivisions. 43–520

69. The valuation of coal lands and deposits by the Director of the Geological Survey, or other agency, under authority of, and in accordance with, rules and regulations of the Land Department, is in effect a valuation of such lands and deposits by the head of that department. 41–662

70. Where an applicant to purchase coal lands failed to make proof and payment therefor within 30 days from the conclusion of the publication of notice of his application, as required by the regulations, and, prior to the tender of proof of purchase money by him, the price of the land applied for had been increased, the applicant will be required to pay the price existent at the time he actually consummates the purchase by paying the money into the local land office. 41–662

71. Where a tract of coal land was reappraised after the opening and improving of a mine and the filing of a declaratory statement, but prior to the expenditure of $5,000 required by section 2348 of the Revised Statutes, the claimant, upon seasonably making the required expenditure, is entitled to purchase at the price existent at the date of the opening and improving of the mine of coal. 41–22

72. Where an application under the coal land law for a tract of land in a school section is treated as a contest against the claim of the State under its grant, and the tract as result of proceedings thereon is held excepted from the school grant, and the applicant is permitted to make entry thereof, he will be required to pay the appraised price of the land existing at the time of making such entry, and is not entitled to purchase at the price existing at the date of the presentation of his application. 41–265

73. Where a tract of land was classified and appraised after the opening and improving of a mine of coal thereon, the filing of a declaratory statement, and the making of the expenditure required by section 2348, Revised Statutes, the applicant is entitled to purchase at the price existent at the date of the opening and improving of the mine. 42–320

74. An applicant to purchase coal lands will not be held negligent in the prosecution of his application because of delay on the part of the local officers for a period of two months in designating the newspaper in which publication of notice of the application should be made, where he proceeds promptly with the publication and posting of notice after such designation, delay for that period not being considered unreasonable; and where in such case the land was reappraised at a higher figure prior to the posting and publication of notice, he will not be required to pay the higher price, but is entitled to purchase at the price existent at the time the application was filed. 42–571

75. A mere withdrawal of lands for coal classification constitutes a claim or report of coal value within the meaning of the act of March 3, 1909. 42–601

76. The act of June 22, 1910, applies to timber and stone entries of lands withdrawn or classified as coal upon which final proof had been submitted and entry allowed prior to the date of the act, as well as to entries of such lands upon which proof had not at that date been submitted. 42–601

77. Where a coal-land applicant filed a proper application to purchase, complied with the regulations of the department as to publication of notice, etc., and paid the price of the land according to conditions then existent as to distance from a completed railroad, he is entitled to purchase at that price notwithstanding the subsequent completion, prior to allowance of entry, of a railroad within 15 miles of the tract. 42–321

78. Paragraphs 3 to 5 of the circular of September 7, 1909, defining the procedure in case a nonmineral entryman whose land is subsequently classified, claimed, or reported as valuable for coal refuses to accept a restricted patent under the act of March 3, 1909, contemplate that testimony as to the character of the land shall be taken in the regular manner, subject to cross-examination, as in other hearings, and do not warrant the adjudication of the land as coal upon mere ex parte affidavits. 42–327

79. In view of the ambiguity in the coal-land regulations of April 12, 1907, as amended November 30, 1907, respecting the time of payment, the delay of the field officer in making his return in this instance, the acceptance of payment and allowance of entry without demur by the register and receiver, and the undoubted good faith of the applicant, the requirement of paragraph 18 of said regulations, that claimant shall within 30 days after the expiration of the period of newspaper publication furnish the proofs specified in said paragraph and tender the purchase price for the land, is waived in this case, the departmental decisions of March 3, April 30, and June 12, 1913 (41 L. D. 661, 666), are recalled and vacated in so far as in conflict herewith, and patent directed to issue upon the entry without requiring payment of the increased price as fixed by reappraisement. 43–429

80. Where lands within the former Crow Indian Reservation were sold under the act of April 27, 1904, as nonmineral, and subsequently, before final payment of the purchase price, were classified as coal, absolute patent therefor will issue to the purchaser, upon completion of the payments, notwithstanding such classification. 44–121

81. Where at the time of application to purchase, payment, and entry of a tract of coal land there was a completed railroad within 15 miles thereof, the applicant is required, under section 2347, Revised Statutes, to make payment at the rate of not less than $20 per acre, notwithstanding at the time of the initiation of applicant's claim to the land by the opening of a mine thereon, there was no completed railroad within 15 miles thereof, and the applicant could not, on account of the land being unsurveyed, make entry until after the completion of the railroad. 44–479

82. Lands withdrawn under the act of June 25, 1910, for examination and classification as to coal values, subject to the provisions, limitations, exceptions, and conditions contained in the act of June 22, 1910, are not subject to soldiers' additional locations under sections 2306 and 2307, Revised Statutes, even though such locations be filed with a view to obtaining title to the land with a reservation of the coal therein to the United States; and the Land Department is without authority to receive an application to locate, enter, or select land withdrawn for classification and not yet classified, and hold the same suspended pending the result of a hearing upon the request of the applicant to determine the character of the land with reference to its coal value. 44–483

83. As coal is not a "metalliferous mineral," the provision of the act of June 25, 1910, as amended August 24, 1912, that lands withdrawn thereunder "shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to metalliferous minerals," does not authorize the allowance of a coal entry for land so withdrawn. 47–329

84. Land classified as coal and valuable therefor is not subject to location, entry, and patent under the general mining laws of the United States. 51–119

85. A classification of land as coal, unless the land be valuable therefor, is not sufficient to bar its location under the mining laws on account of a metallic mineral, and before an application for mineral patent on the basis of such a location is rejected because of the classification, the applicant should be afforded an opportunity to show, if he can, that the classification was erroneous. 51–436

86. Lands classified as coal, and valuable therefor, are not subject to placer location on account of oil shale deposits contained therein. 51–424

87. The act of June 22, 1910, authorizes only agricultural entries on lands withdrawn or classified as coal lands or which are valuable for coal, and it can not be invoked in favor of one claiming other mineral deposits in those lands. 51–424

88. The inclusion of land within a petroleum reserve after its classification as coal does not abrogate, annul, or in any manner impeach the prior coal classification. 51–436

89. The act of February 11, 1897, which declared that lands containing petroleum and other mineral oils, and chiefly valuable therefor, may be entered under the placer mining laws, did not contemplate that the comparative value of a tract for petroleum and for coal should be considered in determining the patentability of the land on account of petroleum. 51–437

90. Proof that a tract of land, classified as coal and valuable therefor, possesses a greater value for petroleum than for coal, does not subject the land to location, entry, and patent under the placer mining laws on account of its oil and gas contents. 51–437

V. Leasing Act of February 25, 1920

91. A claim of priority under an application for a coal prospecting permit over a subsequent application for a lease will not preclude the Secretary of the Interior from determining, in his discretionary authority under the act of February 25, 1920, that exploration is unnecessary, and proclaiming the land subject to lease in the first instance. 48–29

92. The provisions of the act of February 25, 1920, which authorize the Secretary of the Interior, when awarding leases for coal lands thereunder, to recognize equitable rights acquired prior to the act by claimants who had in good faith improved and occupied or claimed the lands under the coal land laws, do not confer any preference right that attaches to or extends over

an area outside of the tracts embraced within the original claims. 48–122

93. Under sections 2348–2352, Revised Statutes, the opening and improving of a mine of coal upon unreserved public lands by a qualified person in actual possession thereof, confers a preference right to purchase for a total period of substantially 14 months; that is, for 60 days absolutely, and for a further period of one year from the filing of a declaratory statement, if filed within the 60 days, and such preference right to purchase is not defeated or abridged by the intervening passage of the leasing act of February 25, 1920. 48–176

94. In determining the time that the leasing act of February 25, 1920, became effective, the general statutory rule of construction that an act is in force and operation during the entire day on which it was approved by the President is to be applied, subject to the privilege of any one having a substantial right that would be affected by the application of said rule to prove, if he can, the exact time of the approval. 48–188

95. An application to purchase coal land under section 2347, Revised Statutes, in order to be entitled to consideration as a valid claim existent at the date of the passage of the act of February 25, 1920, within the purview of the saving clause of section 37 thereof, must thereafter be maintained in compliance with the preexisting law under which it was initiated; and where the application was filed on the day that the leasing act was approved, the applicant will not be permitted to prove that it was filed prior to the time of actual approval, if he has failed to comply with the conditions of the act under which the claim was initiated and of the departmental regulations thereunder relating to its maintenance. 48–188

96. The leasing act of February 25, 1920, contemplates that the word "coal," as used therein, shall be construed according to its generally accepted sense; that is, a natural product used for fuel, a deposit of the character subject to disposition under the coal land laws, and not to include asphalt, gilsonite, ozocerite, and other kindred substances. 48–300

97. The purchase of coal land under the belief that an adjoining tract of public coal land, control of which is alleged to be essential to the continued practical operation of the purchased property, could be secured, is not a basis for the assertion of such an equitable right as may be recognized in awarding a preferential lease under the proviso to section 2 of the act of February 25, 1920. 48–332

98. Where at the date of the enactment of the act of February 25, 1920, there were no surface or subsurface improvements of a mining character upon a tract of public coal land tending in any substantial degree to the development of the coal deposits thereunder, or essential to such development sufficient to establish an assertion of constructive occupancy, a claim of preference right to a lease of that tract must be rejected. 48–332

99. One who, on and prior to the approval of the act of February 25, 1920, was, as transferee, in good faith occupying and claiming public coal land theretofore improved by him, for which his transferor had initiated a claim under the preexisting coal land laws, without, however, having taken the requisite steps to perfect the same, is entitled to equitable consideration in the award of a lease under the first proviso to section 2 of that act. 48–332

100. A selector who, subsequently to the passage of the act of February 25, 1920, in good faith made a selection under the act of June 22, 1874, for and developed unappropriated, classified coal lands, should be given consideration both in the matter of priorities and equities in connection with the award of a lease under section 2 of the leasing act. 49–180

101. The leasing act of February 25, 1920, includes within its operation lands not lawfully appropriated at the date of its passage, which had previously been withdrawn, classified as coal lands, and restored subject to sale at a fixed price, and nothing contained in the act of June 22, 1874, can be construed as conferring a right to relief under section 37 of the former act upon a selector who made selection of classified coal lands subsequently to its enactment. 49–180

102. The provision contained in section 37 of the act of February 25, 1920, excepting from the operation of the leasing act valid claims existent at date of passage of the act, relates only to claims initiated prior to its enactment, and no authority exists for the patenting of coal lands on equitable grounds under a claim initiated after the passage of the act. 49–354

103. The Secretary of the Interior may, upon considerations of equity, accord a preference right to lease coal lands under the act of February 25, 1920. to one who was erroneously permitted to make coal entry and in reliance thereupon in good faith made large expenditures of money, notwithstanding that no claim was initiated prior to the passage of the act, and the coal deposits were not disposable under the general coal land laws at the time that the entry was allowed. 49–354

104. A permit to prospect for coal under section 2 of the act of February 25, 1920, upon lands within a power site withdrawal, may be granted subject to such conditions as will adequately protect the power interests in the lands, where the feasibility of their development for power purposes has not been determined and such development, if any, is likely to be postponed for many years. 49–616

105. The limitation in section 27 of the act of February 25, 1920, respecting the granting of but one lease during the life of that lease, is not to be construed as preventing one who has secured a coal prospecting permit or lease and assigned all rights and interests therein from thereafter securing a second permit or lease. 50–151

106. The provision in section 27 of the act of February 25, 1920, limiting a person, association, or corporation to one coal lease during the life of such lease in any one State, is applicable to coal prospecting permits issued pursuant to section 2 of that act. 50–151

107. The purpose of the limitation in section 27 of the act of February 25, 1920, prohibiting anyone, except as therein provided, from taking or holding more than one coal lease during the life of such lease in any one State, was, according to the legislative intent, to place a restriction on the number of leases that may be taken or held simultaneously, but not as to the number that may be held in succession. 50–153

108. One who, prior to the passage of the leasing act of February 25, 1920, went upon lands embraced within an unrevoked coal land withdrawal and made large expenditures in the development of a coal mine thereupon acquired no legal rights by reason of such expenditures and improvements. 50–158

109. The first proviso to section 2 of the act of February 25, 1920, authorizes the Secretary of the Interior to extend equitable relief by granting a lease without the necessity of competitive bidding to any properly qualified person, or association of persons, who, prior to the approval of the act, had in good faith substantially improved and occupied or claimed an area of public coal lands, not in excess of that to which a valid claim might have been asserted under the coal land laws, where no legal right to purchase is accorded by section 37 of the leasing act. 50–158

110. Neither the leasing act of February 25, 1920, nor any other act of Congress accords to surface entrymen or owners under the homestead law a preference right to a coal prospecting

permit or to a lease upon the land so entered. 50–196

111. Where one who is not entitled to a preference right to a coal lease has in good faith, under erroneous advice, opened and developed a mine of coal, the Secretary of the Interior has the authority to require one obtaining the lease pursuant to section 2 of the act of February 25, 1920, if another, to pay to the one making the improvements the amount that the land has been enhanced in value thereby. 50–197

112. The classification of public lands as valuable for coal does not prevent disposition of their oil and gas contents under the provisions of the act of February 25, 1920. 50–220

113. Section 4 of the act of February 25, 1920, which gives the Secretary of the Interior authority to grant a second coal lease to a lessee when it is shown that all of the workable coal deposits covered by the first lease will be exhausted within three years thereafter, provided that the aggregate areas do not exceed 2,560 acres, contemplates the granting of a second lease prior to the expiration of the original lease, and this provision for the taking and holding of more than one lease is one of the exceptions referred to in the excepting clause of section 27 of that act. 50–293

114. Section 4 of the act of February 25, 1920, which authorizes the granting of a second coal lease to a lessee through the same procedure and under the same conditions as in case of an original lease, includes the authority to grant a prospecting permit as preliminary to a lease. 50–293

115. An applicant for a coal prospecting permit under section 4 of the act of February 25, 1920, does not acquire any preference right to a permit by virtue of the fact that he is operating under a lease of other public coal lands. 50–294

116. The authority conferred upon the Secretary of the Interior by section 4 of the act of February 25, 1920, to grant a second coal lease or a prospecting permit to a lessee when it is shown that all of the workable deposits covered by the original lease will be depleted within three years thereafter, is not limited to contiguous land. 50–294

117. The issuance of a coal prospecting permit, which is merely a license, under the act of February 25, 1920, is discretionary with the Secretary of the Interior, and such permit will be issued only where prospecting is necessary to show either the existence or workability of coal deposits. 50–342

118. While the department may, and occasionally does, issue permits pursuant to the act of February 25, 1920, to prospect unappropriated land even though the evidence before it does not appear to warrant prospecting, yet, where an adverse claim exists, a permit will be issued only upon a clear showing that the land has prospective mineral value. 50–343

119. Where there had been no determination by the department, with full knowledge of the facts, as to the coal character of land, the doctrine of relation can not properly be invoked upon the granting of a prospecting permit under the act of February 25, 1920, to stamp the land as classified, claimed, or reported coal in character, for the purpose of defeating an entry initiated after the permit application was filed but before the permit issued. 50–343

120. Moneys recovered for coal trespasses upon the public lands are covered into the United States Treasury as "Miscellaneous receipts," irrespective of whether the trespasses occurred before or after the enactment of the leasing act of February 25, 1920, and no exception is made as to recoveries from persons who have been awarded leases under that act. 50–501

VI. Surface Patent Lands

121. Circular of June 14, 1912, under act of April 30, 1912, amending act

of June 22, 1910, so as to permit selections by States of lands withdrawn, classified, or valuable for coal. 41–89

122. Instructions of November 21, 1912, respecting prospecting for coal in lands for which surface patent has issued under act of March 3, 1909. 41–358

123. Instructions of March 10, 1913, supplemental to instructions of March 6, 1911, concerning field examinations of lands withdrawn for coal classification or classified as coal. 41–570

124. Instructions of October 26, 1914, concerning prospecting of entered lands under act of June 22, 1910. 43–424

125. The provision in the act of June 22, 1910, that lands withdrawn or classified as coal shall be subject to entry under the homestead laws by actual settlers only, the desert land law, to selection under the Carey Act, and to withdrawal under the reclamation act, with reservation to the United States of the coal therein, does not include State selections, and an indemnity school-land selection for lands withdrawn or classified as coal could not be allowed under that act prior to extension of that provision by the act of April 30, 1912. 41–19

126. The act of April 30, 1912, extended the operation of the act of June 22, 1910, to include selections by the several States under grants made by Congress; and under that provision an indemnity school-land selection, made prior to and pending at the date of the later act, for lands withdrawn or classified as coal lands, or valuable for coal, may, in the absence of intervening adverse rights or other objection, and upon proper election filed by the State, be allowed and accepted as of that date. 41–19

127. The last proviso to section 3 of the act of June 22, 1910, applies only to "lands which have been classified as coal lands," and furnishes no authority to receive an application to locate, enter, or select lands which have been merely withdrawn for classification but not yet classified, and holding the same suspended pending the result of a hearing upon the request of the applicant to determine the character of the land with reference to its coal value. 41–145

128. Where a desert entry of more than 160 acres has been allowed for lands withdrawn for examination and classification with respect to coal value, the entryman will be required, under the provisions of sections 1 and 2 of the act of June 22, 1910, to amend his entry so as to reduce the area to 160 acres and to show that the application is made in accordance with and subject to the provisions and reservations of that act. 41–319

129. The provision in section 3 of the act of June 22, 1910, according applicants for lands classified as coal an opportunity to disprove such classification and secure a patent without reservation, applies only to lands which have been classified as coal, and can not be invoked by an applicant for lands which have been merely withdrawn with a view to classification. 41–319

130. A homestead entry made subsequent to the withdrawal or classification of the land for coal, but based upon settlement initiated prior to such withdrawal or classification, is subject to the provisions of the act of June 22, 1910, and the entryman is not, by reason of such prior settlement, entitled to an unrestricted patent under the provisions of the act of March 3, 1909. 42–82

131. In case of refusal of a State, after notice from the Commissioner of the General Land Office, to accept surface title under the act of June 22, 1910, for a school indemnity selection of withdrawn land, subsequently classified as coal, or to relinquish the selected land, the selection should be rejected, with right of appeal. 42–311

132. The Northern Pacific Railway Co. in waiving its claim to lands within the limits of its grant with a view

to adjustment of the conflicting claims thereto under the provisions of the act of July 1, 1898, must relinquish its entire right and claim thereto; and there is no provision of law under which it is authorized to relinquish its claim to the surface of such lands merely and to retain and receive patent for the underlying coal deposits. 43–513

133. Where lands selected by the St. Paul, Minneapolis & Manitoba Railway Co. in lieu of lands relinquished by it under the provisions of the act of August 5, 1892, had been prior to selection withdrawn from entry and have since been classified as coal, the selection may nevertheless be approved and passed to patent under the act of June 22, 1910, upon waiver by the company of all right to the coal deposits. 43–516

134. Where at the time of the submission of final proof upon a nonmineral entry ex parte affidavits are submitted on behalf of the Government to the effect that the land is coal in character, and the entryman refuses to accept a restricted patent under the act of March 3, 1909, the character of the land should not be adjudicated upon such ex parte affidavits, but the case should be remanded for further hearing in accordance with paragraphs 3 to 5 of the regulations of September 7, 1909, and patent should not issue until the character of the land is finally adjudicated upon the testimony submitted at the hearing. 43–191

135. A showing by a timber and stone applicant, as required by the act of June 3, 1878, that the land applied for contains no valuable deposit of gold, cinnabar, silver, copper, or coal, constitutes merely *prima facie* evidence of the nonmineral character of the land; and where the land was, prior to the timber and stone entry, and prior to the act of June 22, 1910, withdrawn as coal land, and has since been held, as the result of a hearing, to be coal in character, the timber and stone entryman is entitled only to a restricted patent under the proviso to section 1 of said act of June 22, 1910. 44–48

136. Section 9 of the regulations of March 20, 1915, under the act of July 17, 1914, providing for agricultural entries of lands withdrawn, classified, or reported as valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, amended to require that nonmineral entrymen of lands subsequently so withdrawn, classified, or reported, shall be notified of their right to apply for restricted patent therefor under section 3 of said act, and that upon failure to file application for patent within 30 days or to apply for classification of the land as nonmineral, the entry will be canceled. 45–77

137. An Indian otherwise qualified may have his allotment right satisfied from coal lands in national forests subject to surface entry under the act of June 22, 1910. 46–283

138. The act of June 22, 1910, entitled "An act to provide for agricultural entries on coal lands," although not specifically including preemption entries among the classes of entries allowable under the act, contemplated that the allowance of that class of entries should be permitted. 49–667

139. The erroneous allowance of a homestead entry, subsequently canceled because of want of citizenship qualification of the entryman, does not affect the surface rights of an applicant to purchase the land under the coal land laws who had, prior to the cancellation, appropriated the land by taking and maintaining possession thereof and opening a mine of coal thereon. 50–300

VII. Act of April 14, 1914

140. Circular of June 3, 1914, concerning supplemental patent for coal deposits under act of April 14, 1914. 43–271

VIII. Lease

141. Instructions of January 27, 1926, Alaska coal leasing regulations of May

18, 1916, amended. (Circular No. 1049.) 51–339

142. Coal operations upon public lands commenced prior to the award of a lease by one who becomes a successful bidder for a lease at public auction constitute a trespass, notwithstanding that the operations were conducted by a potential lessee. 50–501

143. The mining of coal before the filing of an application for a coal lease by one equitably entitled thereto because of prior operations constitutes a trespass, but all coal mined after the filing of the application pursuant to which the lease is awarded will be deemed to have been mined under the terms of the lease. 50–501

144. A surface entry which has been allowed under existing regulations pursuant to section 29 of the leasing act subsequent to the granting of a lease of the coal deposits will not be canceled merely because the lessee needs the surface and the use thereof by the entryman may cause inconvenience in the conduct of the mining operations. 51–295

145. Omission from the public notice which the departmental regulations require to be issued upon the offering of coal deposits for lease under the act of February 25, 1920, of the statement that a rental must be paid by the lessee does not excuse the lessee from the obligation to make such payment. 51–255

146. The provision in section 7 of the act of February 25, 1920, requiring the payment of a rental on the basis of the acreage wherein coal deposits are leased, is applicable to leased coal lands the surface of which has been patented under the agricultural land laws with the reservations prescribed by the act of June 22, 1910. 51–255

IX. Permits

147. Rights acquired by the filing of a coal prospecting permit application, prior in time, which the local officers suspended for further showing on the part of the applicant, are not defeated by the filing of an application by another where the defect was afterwards cured by an amendatory application and the first applicant was not chargeable with laches. 50–318

148. Instructions of October 13, 1925, coal prospecting permits in Alaska; bonds; paragraph 5, Circular No. 744, modified. (Circular No. 1035.) 51–227

149. Individuals and associations of individuals, but not corporations, may be granted permits or licenses to obtain coal from the public lands without payment of royalty for their use as agents of the United States in prospecting for oil or gas in accordance with the provisions of the leasing act, but not for sale. 51–416

COBALT

See INDIAN LANDS, 50–672.

COEUR D'ALENE LANDS

See TOWN SITES, 47–215.

1. Administrative order of August 28, 1919, relative to reservations in patents for stock-raising homestead entries of Coeur d'Alene lands. 47–254

COLLATERAL ATTACK

See IRRIGATION DISTRICTS, 51–541.

COLOR OF TITLE

1. A void tax deed, followed by a warranty deed for a valuable consideration and long occupancy of the land in good faith in the honest belief that no cloud rested upon the title, is a sufficient basis to constitute color of title. 51–584

COLUMBIA INDIAN LANDS, WASHINGTON

See INDIAN LANDS, 50–571.

COLVILLE INDIAN LANDS

See INDIAN LANDS, 45–489, 563; 49–134, 156; 50–691; TOWN SITES, 47–179.

1. Instructions of May 26, 1920; payments for Colville lands. (Circular No. 698.) 47–400

2. Instructions of July 23, 1921, relative to surplus lands in south half of Colville Indian Reservation. 48–161

COMMISSIONER, GENERAL LAND OFFICE

See CONTEST, 48–353; 49–212, 261, 514; EQUITABLE ADJUDICATION, 49–323, 561; LAND DEPARTMENT, 46–195; 49–250, 465; PRACTICE, 41–295; 50–168; SUPERVISORY AUTHORITY OF SECRETARY, 50–438.

1. Under section 453 of the United States Revised Statutes the Land Department of the Government has always held that in matters pertaining to the public domain, authority granted to the Secretary of the Interior may be exercised, in the first instance, by the Commissioner of the General Land Office, subject to the supervisory authority of the Secretary. 46–201

2. The provision in the act of April 30, 1912 (37 Stat. 106), that "the Secretary of the Interior may in his discretion in addition to the extension authorized by existing law grant to any entryman under the desert land laws a further extension of time within which he is required to make final proof," does not preclude the granting of such extension of time by the Commissioner of the General Land Office, subject to the supervisory authority of the Secretary. 46–201

3. The principle previously enunciated by the department that Rule 72, Rules of Practice, does not prevent the Commissioner of the General Land Office, before an appeal is taken, either on his own motion or where his attention is called to an error or omission, from reconsidering and correcting his decision in ex parte cases, is not to be construed as confined to cases of that class. 48–560

4. Authority to consider and determine the merits and validity of applications for oil and gas prospecting permits, in the first instance, resides in the Commissioner of the General Land Office, and the fact that the local officers, whose functions in this respect are merely ministerial, received without rejecting an application, together with the prescribed bond and fees, does not of itself confer upon the applicant any right to have his application allowed. 50–203

COMMON CARRIER

See RIGHTS OF WAY, 51–41.

COMMUNITY PROPERTY

See HOMESTEAD, 50–563.

COMMUTATION

See HOMESTEAD, VI.

COMPACTNESS

See HOMESTEAD, 48–36, 485; 49–191; OIL, GAS, ETC., LANDS, 48–239; 50–353, 562.

CONFIRMATION

See EQUITABLE ADJUDICATION, 49–562; HOMESTEAD, 49–544; 50–506; RAILROAD GRANT, 49–486, 548; REPAYMENT, 50–161, 298, 429.

1. Instructions of June 4, 1914, under Harris and Wood decisions. 43–322

2. Where a proceeding was initiated against an entry within two years after the issuance of the final certificate, the mere postponement of the taking of testimony until after the expiration of that period does not work a discontinuance of the proceeding or bring the entry within the proviso to section 7 of the act of March 3, 1891. 41–616

3. The proviso to section 7 of the act of March 3, 1891, does not apply to entries under the coal land laws. 41–616

4. The proviso to section 7 of the act of March 3, 1891, operates upon entries against which there is no contest or protest pending at the expiration of two years from the date of the issuance of the receiver's final re-

ceipt; and in the absence of a valid contest or protest the Secretary of the Interior on that date becomes *functus officio* save for the single ministerial act of executing and delivering patent to the entryman or his assignee. 42–566

5. The letter of a special agent of the General Land Office challenging the validity of certain homestead entries in the former Siletz Indian Reservation does not constitute a "protest" within the meaning of the proviso to section 7 of the act of March 3, 1891, and is not sufficient to take such entries out of the operation of said proviso. 42–566

6. Under the proviso to section 7 of the act of March 3, 1891, an entry is confirmed against any proceeding by the Government, as well as against private contests and protests, unless such proceeding was pending at the expiration of two years from the date of the issuance of the receiver's receipt upon final entry. 42–611

7. A contest or protest to defeat the confirmatory effect of the proviso to section 7 of the act of March 3, 1891, must be a proceeding sufficient, in itself, to place the entryman on his defense or to require of him a showing of material fact, when served with notice thereof; and such proceeding will be considered as pending from the moment the affidavit is filed, in the case of a private contest or protest, or from the moment the Commissioner of the General Land Office, on behalf of the Government, requires something to be done by the entryman or directs a hearing upon a specific charge. 42–611

8. In case no contest, protest, or proceeding by the Government was commenced against an entry within two years from the date of the issuance of final receipt, the Land Department is thereafter without jurisdiction to inquire into the known coal character of the land at the date of final receipt, but must issue unrestricted patent upon the entry. 43–246

9. Cases will not be reopened under the doctrine announced in Jacob Harris (42 L. D. 611), where the proceeding has been closed and the entry canceled, without regard to the time that has elapsed since the final action of the Land Department; but cases in which the claimants have asserted in the courts their rights under entries which have been canceled as the result of proceedings begun more than two years after the issuance of receiver's receipt upon final entry, and have diligently and continuously prosecuted their claims, but relying upon the decision in the Harris case have dismissed their suits in court for the purpose of invoking the supervisory authority of the department, are not regarded as coming within the terms or spirit of this rule. 43–262

10. The proviso to section 7 of the act of March 3, 1891, does not operate to confirm an entry against an act of Congress passed prior to the expiration of two years from the date of the issuance of the receiver's receipt upon final entry; and where within the two-year period the land was "classified, claimed, or reported as being valuable for coal," and also within such period the act of March 3, 1909, was passed, the entry is not confirmed against said act, and patent if issued must be in accordance therewith; but in case more than two years had elapsed from the date of the issuance of the receiver's receipt upon final entry prior to classification, claim or report that the land was valuable for coal, or prior to the passage of the act of March 3, 1909, nothing would remain for the Land Department save the ministerial duty of issuing patent. 43–294

11. The proviso to section 7 of the act of March 3, 1891, contemplates a receiver's receipt upon a final entry based upon an existent application or original entry; and the submission of final proof and payment of fees and commissions upon a canceled entry, and the issuance of register's certifi-

cate thereon, do not constitute a final entry within the meaning of said proviso. 43–426

12. The two-year period fixed by the proviso to section 7 of the act of March 3, 1891, begins to run from the date of the issuance of the "receiver's receipt upon the final entry"; and the mere offering of final proof by an entryman is not sufficient in and of itself to bring the entry within the operation of the statute. 44–115

13. Where final proof is submitted after the statutory lifetime of an entry, and within two years from the date of the issuance of the receiver's final receipt, additional evidence is called for by the Land Department or contest or adverse proceeding is instituted against the entry, which operates to suspend action upon the entry by the board of equitable adjudication, the proviso to section 7 of the act of March 3, 1891, does not bar consideration by the board after the expiration of the two-year period. 45–16

14. The proviso to section 7 of the act of March 3 1891, does not operate to confirm an entry made in the name of a fictitious person; and neither the issuance of the final receipt nor even the patent on such an entry would convey any title out of the United States. 46–479

15. The two-year period fixed by the proviso to section 7 of the act of March 3, 1891, which begins to run from the date of the issuance of the "receiver's receipt upon the final entry" has no application to an original homestead entry which has never ripened into a final entry through offer of proof, payment, and the judicial determination of the register that the requirements of law have been met, of which his certificate is the formal expression. 46–496

16. An entry under the mining laws is not one made "under the homestead, timber culture, desert land, of preemption laws," and does not therefore come within the purview of the proviso to section 7 of the act of March 3, 1891, and action upon such entries is in nowise affected thereby. 47–16

17. The receipt issued by the receiver of the local land office under the system of accounts adopted July 1, 1908, for money transmitted with a final proof which had not been the subject of examination and approval, is not the "receiver's receipt upon the final entry" as contemplated by the proviso to section 7 of the act of March 3 1891; nor does a claimant gain any right thereunder by the erroneous issuance of the register's final certificate pending consideration by the department of the issues raised upon appeal duly prosecuted. 47–135

18. The proviso to section 7 of the act of March 3, 1891, does not operate to confirm a canceled homestead entry where no receipt was issued, and the claimant was not entitled to receipt, for moneys tendered with his final proof and merely held subject to his order until the proof should be perfected. 51–347

CONGRESS, ACTS OF

See Part II of Digest.

CONSTRUCTIVE RESIDENCE

1. While homestead entrymen have sometimes been allowed credit for constructive residence during absences due to official employment, such absences have never been recognized as residence on mere settlement claims prior to entry. 41–430

CONTEST

See Abandonment, 41–628, 629; 47–108, 148; Appeal, 50–5, 496; Contestant; Desert Lands, 41–603; 44–161, 477, 500; 48–519; 49–622; Final Proof, 45–7; 48–232; Forest Lieu Selection, 43–119; Homestead, 45–108; 47–225, 393; 48–325, 454; Military Service, 48–166, 548; 49–514; Notice, 50–165, 177; Oil, Gas, etc., Lands, 46–46; 48–158, 580; 49–406; 50–134; Contest; Practice, 41–275; 44–144, 364, 373, 568; 45–168, 169; 46–85; 47–3, 68, 100; 48–638; 50–167, 168, 637; Residence, 47–108; 48–361.

I. Generally

1. Instructions of August 24 and September 4, 1912, concerning contests affecting lands withdrawn under the reclamation act. 41–171, 241

2. Rule 14 of Practice, relating to contests, amended. 41–274

3. Rule 8 of Practice, concerning contests, amended. 41–356

4. Instructions of December 18, 1912, respecting contests against final entry. 41–412

5. Order of March 4, 1914, concerning closing of cases involving entries within forest reserves. 43–165

6. The regulations of April 1, 1913, concerning contests and the rights of contestants will not be given retroactive effect. 44–238

7. Circular of February 26, 1916, governing proceedings in contests on report by representatives of the General Land Office. 44–572

8. Instructions of August 2, 1921, pertaining to the amendment of defective contest affidavits in relation to military service. (Circular No. 767.) 48–166

9. Instructions of February 18, 1922, relative to contests alleging fraud in securing stock-raising homestead designation. (Circular No. 810.) 48–454

10. Instructions of March 22, 1922, relating to proof of nonmilitary and nonnaval service in contest cases. (Circular No. 815.) 48–596

11. Instructions of August 2, 1921, relative to the amendment of defective contest affidavits in relation to military service. 48–166

12. Where notice of a contest is sent by registered mail, proof of delivery of the registered letter containing the notice to the agent of the addressee, authorized by him, in writing, to receive it, is a compliance with the requirement of rule 7 of the Rules of Practice that service of notice in such case must be evidenced by the post-office registry return receipt, "showing personal delivery to the party to whom the same is directed." 41–124

13. Upon the timely presentation of an application to purchase coal lands the declaratory statement theretofore filed by the applicant becomes *functus officio*, so far as strangers to the land are concerned, and can not thereafter be made the object of contest proceedings. 41–275

14. There is no statutory right of contest against a forest lieu selection, and no preference right of entry inures to a contestant who procures the cancellation of a selection. 41–278

15. Where notice of contest was served within the time fixed by rule 8 of Practice, the contest does not abate, under that rule, merely because contestant failed to serve with the notice a copy of the affidavit of contest, as required by rule 7—rule 12 specifically declaring that no contest proceeding shall abate because of any defect in the manner of service of notice in any case where copy of the notice or affidavit of contest is shown to have been received by the person to be served. 41–513

16. Where at the time of the initiation of a contest against a homestead entry contestant met the requirements of rules 1 and 2 of Practice, by stating that he intended to make homestead entry of the land and by showing himself qualified to make such entry, the contest will not abate merely because contestant thereafter becomes disqualified to make homestead entry of that land by exercising his right on other land. 41–518

17. Where a showing requiring cancellation of an entry is made in a contest proceeding, the mere fact that contestant is disqualified to make entry in exercise of the preference right does not cure the existing default of the entryman or entitle him to have the entry remain intact. 42–10

18. An affidavit of contest has no effect until filed in the local office; and where left with the officer before whom it was executed, to be transmitted to the local office for filing, and such officer files in that office simulta-

neously the affidavit of contest, a relinquishment of the contested entry, and an application to enter the land, the relinquishment and application take precedence, notwithstanding they were executed subsequently to the affidavit of contest. 42–117

19. There is no statutory right of contest against a Carey Act segregation list; and the filing of a contest against such a list will not prevent the Secretary of the Interior granting the State an extension of time, under section 3 of the act of March 3, 1901, within which to effect reclamation of the land involved. 42–205

20. An affidavit of contest is not invalidated by the mistake of the notary public before whom it was acknowledged in giving the time of the expiration of his commission as prior to the date of the acknowledgment, when as a matter of fact it would not expire until after that date, and amendment thereof should be allowed; and where a contest affidavit was rejected because of such clerical error in the acknowledgment, and application for reinstatement thereof, based upon correction of the error, was filed within the time allowed for appeal from such rejection, the contestant is entitled to a preference right of entry upon the subsequent relinquishment of the entry. 42–325

21. Two qualified persons may initiate a contest against an entry by joint affidavit; but two separate contests by different persons against the same entry, each attacking a different part of the entry, will not be permitted. 42–399

22. In contemplation of rule 39 of Practice testimony should be taken in support of a contest notwithstanding contestee fails to appear at the hearing; and upon failure of the local officers to require such testimony, the case should be returned, under rule 96, for ex parte showing to support the charge. 42–608

23. Where a contest proceeding is closed upon failure of contestee to appear, without any testimony being taken, he is not entitled as a matter of right to reinstatement of the contest, for hearing on the merits, in the absence of a showing by him of a good defense to the charge made in the contest; but to prevent injustice the Secretary of the Interior may in his discretion direct a hearing in such case. 42–608

24. Absence of a homestead entryman from his claim due to judicial restraint does not break the continuity of his residence and does not render the entry liable to contest on the ground of abandonment. 43–189

25. One at liberty on bail which obligates him not to leave the jurisdiction of the court is under judicial restraint. 43–189

26. The act of August 19, 1911, relieving certain homestead entrymen from residence and cultivation from the date of that act until April 15, 1912, operated to relieve entrymen from the necessity of establishing residence during that period; and an entry within the act is not subject to contest for failure to establish residence until the expiration of six months from the time of making the entry exclusive of the period specified in said act. 43–247

27. The Government is a party in interest in every contest, and the Land Department may properly consider all that the record contains in order to do justice in the case, irrespective of technical *inter partes* rules of pleading and practice, and whether the parties themselves are entitled to have any particular portion of the record considered or not. 43–343

28. A contestant against a homestead entry must file with his contest an affidavit stating specifically the law under which he intends to acquire title; and where he proposes to acquire title by means of scrip, he must state specifically the class of scrip he intends to file. 43–465

29. Where by mistake in description a homestead entry is made for land

not intended to be taken, and amendment is allowed to the tract desired, the entry dates from the amendment, and a contest on the ground of abandonment filed within six months from that date is premature. 44–72

30. The six months' period after the expiration of which a contest on the ground of abandonment will lie against a homestead entry begins to run from the date of the allowance of the entry by the register, and not from the date the entryman receives notice of such allowance. 44–180

31. The provision of rule 8 of Practice that a contest shall abate in case of failure to serve notice thereof within the time fixed by that rule is not applicable where *prima facie* service of notice as required by that rule is shown; and where such *prima facie* service is questioned, on the ground that the person to whom the registered letter containing the notice was delivered was not authorized by the entryman to receive it, contestant should be afforded opportunity to show that such person was the duly authorized agent of the entryman or to apply for the issuance of an alias notice of contest. 44–373

32. The statement in an application to contest that contestant if successful intends to acquire title by purchase of the land as an isolated tract, and showing his qualifications to make such purchase, meets the requirement of paragraph (*c*) of rule 2 of Practice that an applicant to contest must state under what law he intends to acquire title, provided it be shown that the land is of a character subject to that form of appropriation. 44–579

33. A contest against the entry of a deceased homestead entryman on the ground that he left no statutory successor should allege that he left no widow, heir, or devisee, and not merely that he "left no heirs." 45–446

34. An affidavit of contest charging that the deceased entryman "left no heirs" may be amended, notwithstanding an intervening junior contest, to aver that entryman left no widow, heir, or devisee. 45–446

35. Where a homestead entryman who had declared his intention to become a citizen, but had not yet completed his citizenship, was, while visiting his native country, impressed into the military service thereof, his absence due to such cause, which is beyond his control, will not be considered an abandonment of his homestead entry. 45–205.

36. An affidavit of contest will be construed more strictly where the sufficiency of the charge is put in issue prior to allowance of the contest than in a case where contest has been allowed and gone to hearing and the proof satisfies the charge, whether construed liberally or technically, and warrants cancellation of the entry. 45–446

37. A contest brought upon the ground that the entryman is a minor and not the head of a family must fail where, prior to the filing of contest affidavit, the entryman attains his majority. 46–51

38. Where one under 21 years of age and not the head of a family is permitted to make a homestead entry, but attains his majority before the filing of a contest affidavit charging failure to reside upon and cultivate the land as required by law, such contest must fail if six months had not elapsed since the entryman became 21 years of age. 46–51

39. A second contest, by the same person, upon substantially the same charges as in the first, will not be permitted, even though the entryman was not served with notice of the first contest, unless satisfactory explanation is made why the first contest was not prosecuted. 46–53

40. A withdrawal of contest, to be acceptable, must be without conditions. 46–164

41. The benefits of the act of July 28, 1917, are conferred upon bona fide settlers and homestead entrymen whose absence from the land is due

to enlistment in the military or naval service of the United States, and those engaged in other war activities, however worthy, are not within the purview of that act. 46–148

42. The provision of rule 3 of Practice that the statements in the application to contest must be corroborated by the affidavit of at least one witness having personal knowledge of the facts is jurisdictional, and objection to the absence of such corroborating affidavit may be interposed at any time prior to joining issue. 47–5

43. The act of July 28, 1917, clearly contemplates that an affidavit be made the basis of all contests thereafter initiated against homestead entrymen, and a purported affidavit to which contestant's name is signed by another, and executed before a notary public then acting as his attorney, is an absolute nullity, and affords no valid basis for contest. 47–146

44. Absence under leave improvidently granted by the local officers on an insufficient showing apparent upon the records of the Land Department, but without fraud or misrepresentation on the part of the entryman, can not be held to constitute abandonment, nor afford a basis for contest. 47–148

45. An affidavit of contest that does not state a sufficient cause of action is not amendable so as to serve from the date of the original filing, but dates from the filing of the so-called amended affidavit. 47–281

46. The heirs of a deceased entryman under the enlarged homestead act, whose death occurs more than 12 months from the date of entry, without his having established residence, the default not being due to military or naval service, succeed to no right whatever in the land, and the question of military or naval service of the heirs of such entryman is immaterial in a contest proceeding, charging failure to establish residence and abandonment. 48–119

47. An oil and gas prospecting permit is not subject to a contest by a third party and an application therefor can not be entertained. 68–158

48. In a contest proceeding against a stock-raising homestead entry in which failure to establish residence and abandonment are alleged, it is not necessary for an entryman, who was in the military service at the time that the land was designated, to prove the establishment of actual residence, in order to be entitled to credit for constructive residence for time engaged in the performance of farm labor under the act of December 20, 1917. 48–179

49. An entry, voidable because prematurely allowed on an imperfectly executed application, is not subject to contest on such grounds, under rule 1, Rules of Practice. 48–199

50. A contest does not become an adverse right or intervening interest unless and until it results in the cancellation of the entry, and prior to the final determination thereof the contestee is entitled to the remedial benefits of a statute enacted after the initiation of the contest. 48–328

51. The failure of the receiver to join with the register in an opinion rendered in a contest case does not affect the jurisdiction of the Commissioner of the General Land Office to render his decision in the case. 48–353

52. Where the question arises, after a relinquishment of a homestead entry is filed subsequently to the initiation of a contest, as to which of two applicants is entitled to enter the land, one basing his claim upon the contest, the other upon the filing of the relinquishment, the presumption will obtain that the contest induced the relinquishment, and the contestant will be recognized as entitled to a preference right which can only be avoided on a showing that the contest charge was not true, or that the contestant is not a qualified applicant, or that the land is not subject to his application. 48–365

53. For the purpose of contest, the rule that the six months within which

residence must be established begins to run from the date of entry is not applicable to a second homestead entry made under the act of September 5, 1914, but, as against such entry, the time does not begin to run until the entryman is properly notified of the allowance of the entry. 48–516

54. Process should not issue on an application to contest a homestead entry after the death of the entryman where the contestant, having knowledge of that fact, fails to set forth the name and residence of each party adversely interested, together with the age of each heir, as required by Rule 2, Rules of Practice, and, if process inadvertently issue, a default judgment directing cancellation of the entry will not be sustained in the absence of submission of proof of the charges. 48–535

55. An answer incorporated by a contestee as a part of his motion for reinstatement of a contest is to be treated as evidence in the consideration of the case upon appeal on denial of the motion. 48–537

56. The cancellation of a homestead entry upon contest is not a sufficient ground upon which to base a subsequent contest against a stock-raising homestead entry made as additional to the former, even though the latter entry was allowed during the pendency of the first contest. 48–551

57. Where two contest applications are defective, a junior applicant is not entitled to a preference to amend his application over a senior applicant, solely on the ground that the former's application was less defective than that of the latter's. 48–642

58. Action of one of the local officers allowing a contest during the temporary absence of the other, in a case in which it nowhere appears that such action was not acquiesced in by such other officer upon his return, is to be construed to have been the joint action of both officers. 48–648

59. Primary jurisdiction over protests or contests against oil and gas prospecting permits is vested in the Commissioner of the General Land Office. 49–261

60. An entryman does not become a party to contest proceedings prior to the allowance of a contest and service of notice thereof upon him, and where an appeal is taken from an order of dismissal of an application of contest, service of notice of the appeal upon the entryman is not required. 49–374

61. The requirement in rule 8 of practice that proof of service of notice of contest be made within a specified time, where no answer has been filed, is mandatory, and, upon failure of the contestant to strictly comply therewith, the contest abates *ipso facto*. 50–165

62. Submission of testimony at the final hearing before the register and receiver in a contest case, after the taking of testimony before a designated officer, is in the nature of a continuance and is to be governed by the rules of practice relating to continuances. 50–168

63. One who has purchased improvements placed upon a tract of public land by a homestead entryman, and is occupying and cultivating the land at the time of the initiation of a contest by a third party, should be accorded the privilege of intervening with the view to determining his right to defeat the preference right of the contestant on the ground of equitable estoppel. 50–273

II. Charge

64. A charge of abandonment against a homestead entry is established by proof of the sale of a relinquishment of the entry. 42–250

65. The act of January 28, 1910, granting a leave of absence to homestead settlers in certain States for a period of three months from the date of the act, does not have the effect to protect such entries from a charge of abandonment for six months after the termination of the period of absence

granted; but where absence next prior to such period of leave, and absence next following the same, together amount to more than six months, contest on the charge of abandonment will properly lie. 41–289

66. The charge in an affidavit of contest against a homestead entry that the entryman has "wholly abandoned" the land is sufficient, without necessity for the further allegation that the abandonment has continued for more than six months; and upon proof or admission of the charge the entry is subject to cancellation. 41–628

67. In a contest charging abandonment, proof, after due notice, that the entryman has changed his residence from the homestead to another place, warrants cancellation of the entry, without reference to the duration of his residence elsewhere. 41–629

68. Where an affidavit of contest by a placer mining claimant against a homestead entry charges that the land in controversy is mineral in character, and contains averments sufficient to apprise the homestead claimant of the nature of the case and to enable him to prepare his defense without danger of surprise, it is not necessary that the affidavit further contain positive averments as to the character of each 10-acre legal subdivision, based upon personal knowledge; but upon trial of the case it will be incumbent upon the mineral claimant to establish the actual discovery or disclosure of mineral upon each location involved and that the area in conflict is *prima facie* mineral in character containing placer deposits; and for the purpose of so showing the land to be mineral in character it may be divided into 10-acre subdivisions, and the contest may be sustained as to such 10-acre tracts as are shown to be of such character. 41–642

69. Two qualified persons may initiate a contest against an entry by joint affidavit; but two separate contests by different persons against the same entry, each attacking a different part of the entry, will not be permitted. 41–399

70. Where a showing requiring cancellation of an entry is made in a contest proceeding, the mere fact that contestant is disqualified to make entry in exercise of the preference right does not cure the existing default of the entryman or entitle him to have the entry remain intact. 42–10

71. One who files a contest charging default subsequent to the submission of proof is merely a protestant, and acquires by virtue of such contest no such adverse claim as will prevent confirmation of the entry by the board of equitable adjudication. 43–344

72. A homestead entryman is entitled under the act of June 6, 1912, to the whole of the second year of the entry within which to meet the requirement of that act that one-sixteenth of the area of the entry be cultivated during that year; and a contest for failure to cultivate will not lie until the expiration of the second year. 43–379

73. In order to sustain a contest against a homestead entry it must be shown that the entryman, his widow or heirs, was in default at the time of the initiation of the contest, and not merely that such default had at some time theretofore occurred; and the contest must fail if the alleged default is in good faith cured prior to service of notice and such action is not induced by the contest. 43–196

74. As a general rule, an affidavit of contest based wholly upon information and belief, and corroborated in the same manner, should not be accepted. 43–357

75. The charge in an affidavit of contest that the entry is speculative and was made in the interest of some other party may be substantiated either by direct knowledge of the illegal agreement, by admissions of the parties thereto, or by circumstantial evidence tending to show the existence of such agreement; and where the con-

testant has personal knowledge of such agreement his averments should be direct and positive and not upon information and belief, but where he relies either upon admissions or circumstantial evidence, the contest affidavit should set forth sufficient of the facts to show a *prima facie* case upon which his information and belief rest. 43–357

76. An entry contested on the ground that the entryman died intestate leaving no surviving heirs, and charging no default in compliance with the requirements of the law, will not be canceled under rule 14 of Practice merely because of failure of answer to the charge; but in such case the contestant will be required to submit proof to sustain the charge. 44–376

77. There is no statute authorizing contests against State selections, and it is not the policy of the Land Department to permit such contests, especially where the matters alleged in the contest affidavit are matters of record in the Land Department. 45–201

78. Under rule 2 of Practice a contestant must be qualified to make entry, under the law specified by him, at the time of filing his affidavit of contest; and one who is disqualified to make homestead entry by reason of being the proprietor of more than 160 acres of land, is not qualified under rule 2 to initiate a contest with a view to making homestead entry; and where so disqualified at the date of filing affidavit, the fact that such disqualification is subsequently removed does not have the effect to validate the contest. 45–205

79. Upon the death intestate of a homestead entrywoman, who made entry as a widow, leaving surviving a husband and children, the husband does not have the sole right of succession to entry, but where under the statutes of the State the husband is an heir of his wife, the right of succession is to the heirs generally; and a contest against such entry must make both the husband and the children parties, meet the requirements of rule 2 of Practice respecting the name, residence, and age of each heir, and notice thereof be served upon each of them. 45–215

80. In applications to contest public-land entries the statements must be corroborated by the affidavit of at least one witness having such personal knowledge of the facts in relation to the contested entry as, if proven, would render it subject to cancellation; and these facts must be set forth in the witness's affidavit. 46–215

81. A charge in an application to contest a homestead entry that the entryman "has been at all times and now is holding said land for speculation only" is not the equivalent of a charge that the entry was made for speculative purposes, and is not of itself sufficient ground for contest. 46–234

82. Since the amendment of section 2297, Revised Statutes, by the passage of the act of June 6, 1912 (37 Stat. 123), a homestead entry is not subject to contest upon a charge of abandonment until after the lapse of six months and one day from the date of alleged abandonment. 46–234

83. It is not enough, in an application to contest a homestead entry, that the corroborating affidavit contain the allegation that affiants know from personal knowledge that the statements made by the contestant are true, but in such affidavit must be set forth as facts matters which, if proven, would render the entry subject to cancellation. 46–234

84. Under the terms of section 1 of the act of July 28, 1917 (40 Stat. 248), a contest against a homestead entry upon the ground of failure to timely establish residence must fail where the entryman has in time of war entered the military or naval service of the United States prior to the service of contest notice. 46–297

85. A charge in a contest affidavit that the homestead entry is speculative is sufficient if therein it is al-

leged that, prior to entry, the entryman offered to sell his relinquishment thereof, and that he afterwards sold the same. 46–372

86. One who is a junior applicant and thus claims an interest in a tract of public land, is qualified under Rule 1 of Practice to initiate a contest or protest against a prior suspended application which segregates the land, where the allegations relate to matters not shown by the records of the Land Department; and the costs of the hearing thereon should be apportioned as directed by the second sentence of Rule 53 of Practice. 46–501

87. Where a contestant appeals from a decision holding that the charges contained in his affidavit are insufficient, he does not by so doing forfeit the right to thereafter file an amended affidavit of contest, and where a relinquishment of the entry under attack is filed after the affidavit has been so amended, it will be conclusively presumed to have been induced by the contest. 47–37

88. A charge of abandonment is not sustained by evidence to the effect that the residence maintained was not of the character contemplated by section 2291, Revised Statutes, as amended by the act of June 6, 1912, provided a sufficient period of the lifetime of the entry remains within which to meet the requirements of the law as to residence, unless it be made to appear that the entryman has not acted in good faith. 47–108

89. In a contest involving the question as to whether a settlement on lands within the primary limits of a railroad grant excepted the land from the grant, the claimant may offer oral testimony in support of his claim if the facts as to such settlement are not disclosed by the records of the Land Department. 47–304

90. Where the corroborating witness to an affidavit of contest alleges that he has personal knowledge of the facts alleged in the affidavit, and that "the statements therein made are true," such facts need not be repeated, if the witness sets forth a statement of how and why he knows them to be true. 47–337

91. Where neither the contestant nor the corroborating witness states facts, but mere conclusions, the affidavit of contest is defective, and in the event demurrer be interposed must be rejected. 47–558

92. Section 501 of the act of March 8, 1918, which was enacted for the purpose of enlarging the benefits conferred upon persons in the military or naval service in connection with public-land claims, is sufficiently broad in its scope to require an affirmative allegation that the default was not caused by employment in the military or naval forces of the United States, in all contests against homestead entries charging failure of cultivation. 47–604

93. Rule 3, Rules of Practice, requiring that the facts must be set forth in the corroborating affidavit, is complied with where the contestant alleges facts which, if proven, warrant cancellation of the entry, and the corroborating witness adopts these statements by alleging that, from his personal knowledge and observation, they are true. 48–83

94. A charge of fraud, connivance, or conspiracy is not sustained where it is shown that the conservator or the administrator of the estate of an insane or of a deceased homestead entryman, acting in good faith and with the approval of a court of competent jurisdiction, for a valuable consideration to the enrichment of the estate, fails to submit final proof or make defense to a contest under the belief that it would be futile to do so on account of doubtful right by reason of noncompliance with the statutory requirements as to residence and cultivation on the part of the entryman. 48–167

95. A departmental regulation directing that no contest against a homestead entry charging abandonment be entertained during the periods covered

by the act of July 28, 1917, unless accompanied by a nonmilitary service affidavit, is broader than the act itself, which requires such affidavits to be furnished only in contests against those specified in the act; and the practice based upon such regulation need not have controlling weight where, a contest having been entertained, it is clearly shown that the entryman was not of the class which Congress intended to protect. 48–232

96. The granting of an application for leave of absence under the act of July 24, 1919, will not defeat a contest, based upon the charge of abandonment, where it is proven that abandonment actually occurred long prior to the filing of the application for relief. 48–297

97. An application to contest a homestead entry, the relinquishment of which was procured by a third party after the initiation of the contest, will not be rejected for failure to comply with the nonmilitary and nonnaval averment requirement of the act of July 28, 1917, where abandonment of the entry is charged and it is clearly established by evidence that the entryman's absence was not due to military or naval service. 48–365

98. To meet the requirements of the act of July 28, 1917, it is necessary to allege in a contest affidavit charging abandonment that the absence "was not due" to military or naval service, and an application to contest based upon the charge that the absence "is not due" to such service is defective and will not justify the cancellation of an entry on a default judgment where no evidence was offered to prove that the abandonment "was not due" to military or naval service; and an entry so canceled on such a judgment should be reinstated. 48–533

99. Failure to allege in a contest affidavit that the abandonment of a homestead entry was not due to military or naval service is not sufficient ground for the dismissal of a contest when it conclusively appears that the physical condition of the entryman was such as to incapacitate him from such service, thereby excluding him from the class for whose benefit the act of July 28, 1917, imposed the requirement. 48–535

100. The nonmilitary and nonnaval service averment required by the act of July 28, 1917, must be expressed in the words of the statute or be sufficiently broad to include both military and naval service, and contest affidavits which contain expressions as "said default was not due to military service of any kind or service in any organization connected with the military department of the United States," and "absence was not due to military service of any nature" are defective. 48–536

101. The nonmilitary and nonnaval service averment requirement of the act of July 28, 1917, is directory and mandatory, but it is not jurisdictional where, a contest having been entertained upon a defective affidavit, it is conclusively shown that the contestee was not of the class for whose benefit the legislation was enacted, notwithstanding that a departmental regulation makes it compulsory that such requirement shall be complied with in all contests thereafter initiated. 48–537

102. While the provisions of the act of July 28, 1917, were intended to afford protection only to those of the class specified in the statute, yet a departmental regulation requiring the nonmilitary and nonnaval service averment in every contest affidavit thereafter filed is not only a proper one but is also necessary in determining whether a contestee was or was not in the military or naval service. 48–537

103. The act of July 28, 1917, which was intended to protect those coming within the class specified in the statute, relates to the matter of pleading, the burden being placed on the contestant at the outset, but if the contestee fails to object to the allowance

of a contest upon a defective affidavit, and it is afterwards conclusively shown that the latter is not entitled to the protection of the act, advantage can not then be taken by employment of a technicality under a departmental regulation to set aside a judgment holding the entry for cancellation for good and sufficient reasons. 48–537

104. A contest affidavit charging abandonment of a homestead entry after the discharge of the entryman from the military or naval service of the United States is not defective for failure to plead literally in the terms of the act of July 28, 1917, and such affidavit, if otherwise sufficient, will, upon relinquishment of the entry, support a claim of presumptive preference right as against a subsequent contestant. 48–548

105. A contest abates *ipso facto* if proof of service is not filed within 30 days from date of service, as required by rule 8, Rules of Practice, in case no answer is submitted, and a second contest by the same contestant will not be sustained upon substantially the same charges, notwithstanding that the entryman was not served with notice of the first contest, unless satisfactory explanation is made why the first contest was not prosecuted. 48–551

106. An allegation in a contest affidavit that an entryman had "wholly abandoned his original and his additional entry," is too general in its terms to warrant the ordering of a hearing, in that it does not show when the abandonment began or how long it continued. 48–564

107. In a contest against a homestead entry predicated upon a charge of abandonment it is incumbent upon the contestant, if he would maintain the contest, to show that the absence was not under conditions recognized by law, inasmuch as such absence does not constitute abandonment. 49–241

108. While an entryman who absents himself from his entry to perform farm labor elsewhere subjects himself to a contest on the ground of abandonment by his failure to file the notice and written statements required by the act of December 20, 1917, yet he is not precluded, if a contest be instituted, from showing in defense thereof that his absence was under conditions authorized by that act. 49–241

109. The rule enunciated in Tieck *v.* McNeil (48 L. D. 158), to the effect that an oil and gas prospecting permit is not subject to contest by a third party, did not intend to bar a contest based upon matters affecting the legality or validity of the claim not disclosed by the records or known to the department. 49–260

110. The provisions contained in section 13 of the act of February 25, 1920, requiring an applicant for a prospecting permit thereunder to monument the ground and post notice, being mandatory, a contest or protest sufficiently alleging failure to comply therewith should be received and, if found proper, affords a basis of an order for a hearing. 49–260

111. In a contest against a homestead entry alleging abandonment, the presumption arises that the abandonment was not due to military service, and the department will resort to the records of the War Department for the purpose of substantiating such presumption, where the entry was made after the military forces of the United States, mobilized during the war with Germany, had demobilized, the entryman was present at the hearing and refused to testify, and the evidence failed to disclose any military or naval service on his part since the date of the entry. 49–318

112. The reinstatement and dismissal of a contest by the Commissioner of the General Land Office, without granting a hearing to the contestant, is not an act in excess of the authority of that official where, a contest having been entertained, it develops that the charge upon which the contest was based does not constitute a cause of action. 49–514

113. Section 2291, Revised Statutes, prescribes a course of descent of an entryman's homestead rights in which his widow, if there be one, is given a separate status by being accorded preferment over all other persons upon whom the law might cast descent; therefore, an affidavit of contest charging "that the heirs, if any, are unknown," is fatally defective, in that the term "heirs" as used in the statute does not include "widow." 49–601

114. A contest against a homestead entry on the ground of failure timely to establish residence is prematurely initiated and should be dismissed where the statutory period of the entry has not expired and it is shown that the entryman is in the military service of the United States pursuant to an enlistment antedating March 3, 1921. 49–617

115. An affidavit of contest against a homestead entry charging abandonment is insufficient if it fails to negative the fact that the entryman is in the military service of the United States pursuant to an enlistment antedating March 3, 1921, and where it is shown that the homesteader is in such service, no authority exists for making a distinction that the entryman's service is "voluntary." 49–617

116. A contest against a homestead entry, based upon the charge that the entryman was disqualified to make the entry because he was an alien, must be dismissed unless the contestant, upon whom is cast the burden of proof, substantiates the charge by convincing evidence. 49–639

117. Instructions of July 11, 1924, contests against homestead entries on the charge of abandonment; Circular No. 750, amended; Circular No. 815, revoked. (Circular No. 949.) 50–575

118. Failure to comply with the proof of publication requirement prescribed in Rules of Practice 8 and 10, is not a sufficient ground for the abatement of a contest, where the contestant is seeking to cancel an entry because he is claiming the land under color of title, and the contestee fails to answer allegations which, when undisputed, warrant the holding that the tract was not subject to entry. 50–1

119. The Land Department is without jurisdiction to entertain a contest against an entry for which a patent has been duly executed, but not delivered to the patentee because it was prematurely and erroneously issued. 50–16

120. An affidavit of contest which contains charges that are mere statements of conclusions, unsupported by any allegations of fact, is not a good and sufficient affidavit upon which the contestant can predicate any rights under his contest. 51–46

121. A homestead entry is not subject to contest on the ground of abandonment where the entryman is placed under judicial restraint. 51–174

122. An application to contest which does not allege an existing default or disqualification in the enrtyman does not contain a sufficient charge upon which to predicate a contest. 51–174

123. A contest affidavit which does not contain the date and number of the entry or a correct description of the land and merely alleges that the homestead has been wholly abandoned for more than two years, does not meet the requirements prescribed by the Rules of Practice, and may not be amended after the entry is relinquished and a third party has applied to enter the land. 51–183

III. Proceedings by Government

124. Where a charge of failure to comply with the law is made by an officer of the Government against a homestead entry upon which final proof has been submitted but suspended for investigation, the burden is upon the entryman to show affirmatively that the requirements of the law have been met. 41–513

125. Proceedings by the Government against a coal-land entry are not invalidated by reason of failure to serve

notice thereof upon the first transferee, where he no longer has any interest in the claim and is under no liability to protect those to whom he has transferred. 41–616

126. It is within the sound discretion of the Commissioner of the General Land Office to permit individuals to participate in Government proceedings against forest lieu selections. 43–119

127. The Government is always a party in interest in contest proceedings, and in order to prevent lands being disposed of contrary to law may take advantage of evidence brought out at a hearing, although on a point not charged in the affidavit of contest. 44–161

128. Where a contest is erroneously dismissed by the local officers on a motion of the contestee on the ground of insufficiency of evidence, the Commissioner of the General Land Office is without authority to dispose of the case upon his reversal thereof, without first affording the contestee an opportunity to submit testimony. 49–212

129. The cancellation of a homestead entry, based upon proceedings initiated more than two years after the issuance of final certificate thereon, is without authority of law, and a forest lieu selection rejected because of such erroneous cancellation of the base land, remains legally pending and comes within the provisions of the act of March 3, 1905. 47–99

CONTESTANT

See Application, 43–263; Coal Land, 41–177, 275; Contest; Desert Lands, 43–346, 497; Fees, 50–177; Notice, 50–177; Practice, 44–144, 364; 45–168; 48–415; Preference Right; School Lands, 45–458; 47–58; 49–212.

1. One who files an application to enter, relying upon a relinquishment filed concurrently therewith but executed 16 months before by a former entryman for the same land, and without having made any inquiry at the local office of the land district in which the land is located to ascertain whether any contest was pending against such entry, does not thereby acquire any such right as will defeat the right of the contestant under an intervening well-founded contest filed in good faith, notwithstanding the relinquishment was in no wise the result of the contest. 41–606

2. Where contestant at the time of filing contest affidavit makes the showing as to qualifications required by rule 2 of Practice, the burden rests upon contestee, where he charges contestant's disqualification to make entry, to prove such allegation. 42–10

3. Where a showing requiring cancellation of an entry is made in a contest proceeding, the mere fact that contestant is disqualified to make entry in exercise of the preference right does not cure the existing default of the entryman or entitle him to have the entry remain intact. 42–10

4. A contestant who settles upon the land embraced in the entry under contest and maintains residence thereon, may be credited with the full period of such residence where the contested entry is afterwards canceled and the contestant is permitted to make homestead entry. 43–187

5. The registered letter containing notice to a contestant of the cancellation of the entry under contest and of his preference right of entry should be delivered only to contestant himself, which must be evidenced by his signature on the registry return receipt, or to some one duly authorized by him in writing to receive and receipt for the same, which must be evidenced by the signature on the return receipt of the party so authorized, as attorney or agent for contestant. 44–367

6. Where a contestant by his negligence in failing to call for the letter, or by changing his post-office address without notification to the local office, and without authorizing some one else in writing to receive the letter for him,

puts it out of the power of the Land Department to deliver the notice to him or some one authorized by him, he will, after expiration of the period accorded him within which to exercise his preference right, and return of the letter uncalled-for, be considered to have had constructive notice, and will not thereafter be heard to complain that he never received the notice. 44–367

7. To charge a contestant with constructive notice where he fails to call for the registered letter containing notice of his preference right, the letter must have remained in the post office, subject to call, during the entire period it was required to be so held, and must be returned to the local office as uncalled for at the end of that period as evidence of that fact. 44–367

8. Direction given that hereafter all registered letters containing notices to contestants advising them of the cancellation of entries under contest and of their preference rights of entry shall bear a direction to the postmaster to deliver the letter only to the addressee or to some one duly authorized by him in writing to receive it. 44–367

9. After an entry has been canceled as the result of a contest, the right of the contestant to make entry in exercise of his preference right is a matter solely between him and the Government, and the entryman has no longer any such interest in the land as entitles him to be heard with respect to the contestant's right of entry: nor does the entryman, by settlement and the filing of an application to make second entry of the land within the preference-right period, acquire any right as against the successful contestant. 45–453

10. The allowance of an entry to a successful contestant in exercise of his preference right constitutes a determination by the Land Department that he is *prima facie* entitled to such right, and one attacking such entry on the ground of the entryman's disqualification, assumes the burden to establish the truth of the charge. 45–453

11. While the Commissioner of the General Land Office may, in his discretion, avail himself of the aid of a contestant to determine the validity or invalidity of a school indemnity selection, his refusal to accept such aid is not the denial of a legal right, and his exercise of discretion in such matter will not be controlled by the department unless abuse thereof is clearly apparent. 45–458

12. Where relinquishment of an entry is filed with full knowledge of the filing of a contest against the entry, such relinquishment will be presumed to have been induced by the contest, and the contestant will be recognized as entitled to a preference right to enter the land, notwithstanding notice of the contest may not have been served upon the entryman at the time of filing the relinquishment. 45–548

13. Where, after the initiation of a contest against an entry, the entryman relinquishes before notice of the contest is served upon him, the question as to whether the contestant should be accorded a preference right to enter the land will first be dependent upon the sufficiency of the affidavit of contest. 51–46

14. Where a homestead entry is relinquished in favor of a third party during the pendency of an application to contest, the rights of the contestant with respect to entering the lands must be determined in accordance with the state of the record at the date of the acceptance of the relinquishment. 51–183

15. Where, during contest proceedings, a contestant becomes qualified to make entry under another law than that stated in his application to contest, he may take advantage of the changed condition. 46–164

16. Time consumed by the Land Department in determining whether desert land is capable of reclamation, in connection with a contestant's application to make entry in the exercise of the preference right conferred by

the act of May 14, 1880 (21 Stat. 140), will be deducted in computing the preference right period. 46–105

17. While the preference right accorded by the act of May 14, 1880, is not assignable or transferable, a successful contestant in the exercise thereof is not required to show that he is seeking the land involved for his own continued use and benefit; and he may utilize a valid soldiers' additional right in the exercise of such preference right even though he contemplates transferring the land to another when the entry is perfected. 47–298

18. The preference right of entry accorded a successful contestant by the act of May 14, 1880, is a statutory right which can not be extinguished by any regulation in fatal conflict with and not authorized by law. 47–288

19. The act of March 8, 1918, relieving public-land claimants from penalty of forfeiture for failure to perform any material acts required by law under which the claims were asserted, during the period of their military service, suspends the running of the time within which preference right must be exercised, where a successful contestant enters the military service prior to the expiration of the preference right period, without having exercised his right; but the time commences to run again immediately upon his discharge. 48–39

20. The mailing of a letter to a successful contestant, who has not changed his record address and who holds himself in readiness to receive all notices sent to him, notifying him of his preference right, does not charge him with constructive notice thereof, if, through no fault of his, the letter is not delivered to him and he has no knowledge of its having been sent; and where there has been no negligence or lack of diligence on his part he is entitled to exercise the right within the statutory period from the time that he comes into possession of knowledge that the contested entry has been canceled. 48–267

21. The saving clause of the Executive order of December 8, 1924, which excepted from the operation of the withdrawal "any valid existing rights in and to" the lands on the islands off the coast or in the coastal waters of the State of Florida, withdrawn by it, protects, upon cancellation of an entry as the result of a contest, the preference right of the contestant which had been earned, although not actually awarded prior to the withdrawal. 51–225

CONTIGUITY

See Homestead, 46–50; 48–23, 271, 579; 49–191, 244, 245; Indian Lands, 44–391; Mining Claim, 48–598, 599; 51–123; Oil, Gas, etc., Lands, 50–353, 562, 665, 690; Settlement, 45–94; Timber and Stone Act, 42–592.

CONTINUANCE

See Practice, 45–168; 48–415; 50–168.

COOS BAY WAGON ROAD LANDS

See Oregon and California Railroad Lands, 50–376; 51–631.

1. Regulations of May 2, 1923, restoration of lands in the former Oregon and California and Coos Bay Wagon Road grants. (Circular No. 892.) 49–566

2. Instructions of September 26, 1919, as to sale of timber. 47–381

3. Instructions of June 22, 1920, relative to sale of timber and preference rights of settlers on power-site lands; also as to exchanges. 47–411

CORPORATION

See Oil, Gas, etc., Lands, 51–242, 272, 587; Reclamation, 42–250, 253.

1. Instructions of July 10, 1912, governing applications for right of way by corporations. 41–101

2. A foreign corporation authorized to do business within the State of Montana, and empowered by its charter and the laws of that State to hold real estate, and which has improved and is in possession of and conducting

its business upon town lots within the town site of Poplar, in that State, is qualified within the meaning of section 14 of the act of May 30, 1908, so far as the requirement of residence is concerned, to make entry of such lots under and in accordance with the provisions of that section. 41–331

3. The fact that a coal entry by an individual was made for the benefit of a corporation does not affect the validity of the entry, provided the corporation and each of the persons in whose interest the entry was directly or indirectly made possess the requisite qualifications to make entry under the coal land laws. 41–337

COSTS

See INDIAN LANDS, 51–613, 614; PRACTICE, 50–637.

COURTS

See ESTOPPEL, 49–660; INDIAN LANDS, 49–377; JURISDICTION, 50–16, 321, 510; LAND DEPARTMENT, 50–23, 521; OIL, GAS, ETC., LANDS, 49–634; PATENT, 49–548; 51–45; PRACTICE; PRIVATE CLAIM, 49–548; 51–591; RES JUDICATA, 50–173.

CROSS LAKE, LA.

See LAKE, 50–180.

CROW INDIAN LANDS, MONTANA

See INDIAN LANDS, 49–194, 376, 377; 50–258, 573; PATENT, 50–676.

1. Instructions of March 2, 1918, regarding reentry of lands within ceded portion of Crow Reservation. 46–299

2. Instructions of June 23, 1920; extension of time for payments on Crow Indian lands. 47–414

3. Regulations of December 19, 1921, governing leasing of minerals on Crow Indian Reservation. 48–368

4. Congress having by the act of April 27, 1904, provided a complete system for the disposition of the ceded portion of the Crow Indian Reservation, and specifically declared that the lands opened to entry under that act shall be disposed of under the homestead, town site, and mining laws, such lands are not subject to sale as isolated tracts under section 2455, Revised Statutes, as amended. 43–181

5. Where lands within the former Crow Indian Reservation were sold under the act of April 27, 1904, as nonmineral, and subsequently, before final payment of the purchase price, were classified as coal, absolute patent therefor will issue to the purchaser, upon completion of the payments, notwithstanding such classification. 44–121

6. A decision of the Secretary of the Interior construing the provisions of section 5 of the act of Congress of April 27, 1904 (33 Stat. L. 352, ch. 1624), for the disposal of lands ceded by the Indians of the Crow Reservation in Montana, to the effect that the provisions of the homestead laws with respect to residence and cultivation are applicable to an entry of such lands, is within the discretionary powers of the Secretary, and a cancellation of the entry in accordance therewith will not be prevented by an injunction. 46–457

7. The intention of Congress to make the provisions of the homestead law applicable to homestead entries under the act of April 27, 1904, of lands ceded by the Crow Indians in Montana, is not disproved by the act of February 20, 1917 (39 Stat. L. 926, ch. 101), which provides that any person "who has heretofore entered under the homestead laws and paid a price equivalent to or greater than $4 per acre, lands embraced in a ceded Indian reservation, shall, upon proof of such fact, if otherwise qualified, be entitled to the benefits of the homestead law as though such former entry had not been made." 46–457

8. A member of the Crow Tribe of Indians who was enrolled on June 4,

1920, but who died subsequently thereto, comes within the class entitled to a pro rata distribution of the remaining unallotted allotable lands of the Crow Reservation, Mont., authorized by the act of that date, regardless of whether or not a selection was made prior to death. 48–479

9. An "expectancy" consisting of the right to share in the final division of the unallotted lands in the Crow Reservation, Mont., is a descendible right which in case of intestacy inures to the benefit of the heirs, and may be devised, subject to the approval of the Secretary of the Interior, pursuant to section 2 of the act of June 25, 1910, as amended by the act of February 14, 1913. 48–479

10. Section 16 of the act of June 4, 1920, which granted to the State of Montana for common school purposes, two designated sections of nonmineral and nontimbered lands in each township in the Crow Indian Reservation, for which the State had not previously received indemnity, clearly intended that where the lands in place, or portions thereof, have been allotted or are mineral or timbered, the State shall be entitled to select other unoccupied, nonmineral and nontimbered lands in said reservation to the extent of such deficiencies, not to exceed, however, two sections in any one township. 48–512

11. Where the State of Montana is unable to obtain in any township within the Crow Indian Reservation, the quantity of land, in place or as indemnity, granted to it for common school purposes by section 16 of the act of June 4, 1920, it is entitled under the provisions of the acts of February 22, 1889, and February 28, 1891, to select other lands subject to selection, outside of said reservation, in quantity equal to such loss. 48–512

12. Instructions of July 14, 1926, extension of time for payments on Crow Indian lands. (Circular No. 1080.) 51–490

CULTIVATION

See CONTEST, 48–167; DESERT LANDS, I; FINAL PROOF, 46–415; HOMESTEAD, VII; INDIAN LANDS, 42–244; 46–426, 457; MILITARY SERVICE, 47–128, 151; 48–107; 203, 207, 236; RECLAMATION, 42–534; 43–436; 44–89; RESIDENCE, 42–96.

1. Instructions regarding reduction of area of cultivation on homesteads in national forests. (Circular No. 530.) 46–43

2. Instructions relative to reduction of required area of cultivation. 46–509

3. Instructions of February 1, 1924, reduction of area of cultivation; paragraph 27 (b), Circular No. 541, amended. (Circular No. 912.) 50–260

4. The homestead law contemplates a continuous compliance both as to residence and cultivation, beginning with the date of entry. 41–119

5. The department adheres to the instructions contained in paragraph 27 of the circular of June 1, 1915, that the tilling of the land, or other appropriate treatment, in vicinities where summer-fallowing is generally followed or is necessary for the purpose of conserving moisture with view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act of June 6, 1912. 47–253

6. The act of July 28, 1917, allowing credit for military service does not waive the cultivation requirements of the statute; it merely reduces them. 48–107

7. The provision in the act of June 6, 1912, pertaining to the granting of relief from the area of cultivation required of homesteaders, does not confer the privilege of demanding as a matter of right that the relief be granted or mandatorily require the granting of such applications in any case or class of cases. 50–549

8. Where, at the time of entry under the enlarged homestead act, the land was subject to entry under both that

act and the stock-raising homestead act, and was suitable only for grazing, the entryman is not entitled to equitable consideration in support of an application for reduction of the required area of cultivation. 50–549

9. Cultivation of land of the original farm, formerly under cultivation, may be offered in proof of cultivation submitted in connection with an adjoining farm homestead entry. 50–670

DALLES MILITARY WAGON ROAD

See States and Territories, 45–613.

DAMAGES

See Claims for Damages.

DECIDUOUS FRUITS

See Desert Lands, 45–481.

DECISION

1. A decision of the Commissioner of the General Land Office, from which no appeal was taken, is just as much a final decision as if appeal had been taken and final decision rendered thereon by the Secretary of the Interior. 44–486

DECLARATORY STATEMENT

See Coal Lands, III.

1. A declaratory statement filed by a soldier or sailor under section 2309 of the Revised Statutes, or by the widow or minor orphan children of a deceased soldier or sailor, can be carried to entry only by the beneficiary named in the statute; and upon the death of the declarant the right to make entry under the declaratory statement does not pass to his heirs or devisee. 43–532

2. The mere filing of a soldiers' declaratory statement is not the equivalent of an entry within the meaning of section 2306, Revised Statutes, and is not therefore a proper basis for additional right under that section. 43–295

3. A soldiers' declaratory statement which never ripens into a homestead entry is not a sufficient basis for a soldiers' additional right under section 2606. Revised Statutes. 43–300

DEED

See Homestead, 44–52; Patent, 49–548; Right of Way, 49–187.

1. By the weight of authority in the United States, one who signs and acknowledges a deed, though his name be omitted from the body of the instrument, makes the deed his own, and becomes bound in the premises conveyed, but even if that rule did not prevail in the State of Oregon, any defect resulting from such omission is cured by statute. 49–187

DEPOSITION

See Evidence, 42–160; 44–41; Fees, 42–195; United States Commissioner.

DESCENT AND DISTRIBUTION

See Carey Act, 50–647; Contest, 48–119, 535; 49–601; Homestead, IV; Indian Lands, 48–609; 49–414; 50–551; Patent, 49–548; 51–244.

DESERT LANDS

See Application, III; Carey Act, 41–256, 379, 649; 45–535; Imperial Valley, 42–569, 592; Military Service, 69–250; 50–674; Reclamation, 43–374; 44–386; 50–521; Repayment, 42–397; 46–71, 229, 440; 48–291, 292; 50–161, 416, 429; School Lands, 44–347; 45–471; 48–103; 49–611; Withdrawal, 46–17.

I. Generally

1. Instructions of July 28, 1913, concerning expenditures for stock in an irrigating company as available for annual expenditure in connection with a desert entry. 42–295

2. Paragraphs 12 and 13 of desert-land circular of September 30, 1910, amended March 23, 1914. 43–203

3. Paragraph 13 of desert-land circular of September 30, 1910, as amended March 23, 1914, further amended. 43–528

4. Circular of September 26, 1914, under act of September 5, 1914, providing for second desert entries. 43–408

5. Circular (No. 474) of May 18, 1916, governing entries and proofs under the desert-land laws. 45–345

6. Regulations of February 18, 1918 (Circular No. 590), regarding military service of desert-land entrymen during the war with Germany. 46–294

7. Instructions of September 13, 1923, effect of withdrawal of allowable application to make desert-land entry. 50–135

8. Instructions of November 12, 1923, effect of filing of allowable desert-land application respecting the rights of the applicant, act of September 5, 1914. 50–184

9. Instructions of April 26, 1924, acceptable expenditures on desert-land entries; paragraph 18, Circular No. 474, amended. (Circular No. 933.) 50–398

10. Regulations of May 20, 1924, entries and proofs under the desert land laws; Circular No. 474, revised. (Circular No. 474.) 50–443

11. The desert-land act of March 3, 1877, which fixed the sum of 25 cents per acre as the price to be paid upon the initiation of all desert-land entries, did not supersede and destroy the proviso to section 2357, Revised Statutes, which fixed a double price for reserved sections within the limits of a railroad grant. 50–416

12. The provision in the act of August 30, 1890, limiting the amount of land that may be acquired by one person under the agricultural public land laws to 320 acres, will prevent one who has of record an entry made under the enlarged homestead act for 320 acres, or its equivalent, from making entry under the desert-land law. 41–283

13. Section 5 of the act of June 27, 1906, authorizing an extension of time for compliance with law on desert entries within reclamation projects, applies only to entrymen who have been directly or indirectly delayed or prevented from carrying out their plans and works for obtaining a water supply by creation of a reclamation project. 41–377

14. The initial payment of 25 cents per acre required of a desert-land entryman at the time of filing his application is within the term "filing fees," as used in the act of February 3, 1911; and the fact that an entryman received for his relinquishment the amount of such initial payment does not disqualify him from taking an assignment of a desert entry as a second entry under that act. 42–94

15. Land which as a rule lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as "dry farming," is, if susceptible of irrigation, subject to entry under the desert land law. 42–524

16. The act of March 28, 1908, prohibiting desert-land entries on unsurveyed lands, has no application to the lands in Imperial Valley, Calif., authorized to be resurveyed by the act of July 1, 1902. 41–257

17. The act of March 28, 1908, according a preference right to make desert-land entry, after survey, to one who has taken possession of and reclaimed or commenced to reclaim a tract of unsurveyed desert land, has no application to lands which, although theretofore surveyed and plat thereof filed, have been suspended from all forms of entry or disposal pending a resurvey. 43–497

18. The mere filing in the office of the county recorder of a notice of intention to claim certain unsurveyed lands under the desert land laws and of an appropriation of water for the purpose of irrigating the same, does not constitute the initiation of a right

thereto under the act of March 28, 1908, which may be perfected under section 3 of the act of February 11, 1915, providing for the opening of lands within the Fort Assiniboine abandoned military reservation. 45–511

19. The heirs of one qualified to make desert-land entry, who, in her lifetime, began the reclamation of a tract of unsurveyed desert land, under the provisions of the act of March 28, 1908 (35 Stat. 52), may, upon survey of the land, make entry of the tract as heirs of the deceased claimant. 46–318

20. A claimant who in good faith reclaims, under authority of the act of March 28, 1908, a tract of unsurveyed desert land which, upon survey falls within a section designated under the school land grant to the State of Montana acquires, by reason of its indemnity provision, a right to make entry superior to any claim of the State under said grant. 48–103

21. The act of March 28, 1908, conferring a preference right of entry upon persons who prior to survey take possession of unsurveyed desert land and reclaim or in good faith commence the work of reclaiming the same, has no retroactive effect. 43–346

22. The act of July 1, 1902, which authorized the Secretary of the Interior to resurvey certain lands in San Diego (now Imperial) County, Calif., was in effect a legislative declaration that the lands were to be deemed unsurveyed until the approved plats of resurvey were filed in the local land office, and consequently, in the absence of a withdrawal, they became subject to the preference right provision contained in the proviso to section 1 of the act of March 28, 1908, relating to the occupancy of unsurveyed desert land. 49–413

23. In determining the statutory lifetime of desert-land entries embracing lands in the Chuckawalla Valley in the State of California, it is necessary to note the extensions granted by the acts of June 7, 1912, March 4, 1913, and April 11, 1916; and the further fact that such period does not run during any suspension effected by the withdrawal of land for the purpose of resurvey. 47–84

24. There is no objection to including within a desert-land entry a legal subdivision less than one-eighth of which is susceptible of irrigation, if such subdivision is necessary to carry out the irrigation scheme adopted by the entryman to irrigate adjoining tracts embraced in the entry. 43–269

25. The cancellation of a desert-land entry upon a voluntary relinquishment constitutes a loss, forfeiture, or abandonment of the entry within the meaning of the act of February 3, 1911, granting the right of second entry to desert-land entrymen who from any cause have "lost, forfeited, or abandoned" their former entries. 43–357

26. A desert-land entry is subject to contest at any time on the ground that there is no adequate, permanent, and feasible source of water supply for the irrigation of the land. 44–161

27. The desert-land law contemplates that an entryman thereunder shall show a permanent and feasible source of water supply and that sufficient water is or will be available to irrigate and reclaim the whole of the land entered or as much thereof as is susceptible of irrigation and to keep it permanently irrigated. 44–161

28. Lands containing a deposit of bauxite, carrying alumina, or aluminum oxide, but not in sufficient quantities to make them commercially valuable for the alumina contained therein, according to any known process of extracting the mineral, are not thereby excluded from appropriation under the desert-land laws. 44–217

29. The damming of a dry draw and the retention of the water in a coulee or low tract of land has been found by the Land Department to be a very unsatisfactory and unreliable system of irrigation for the reclamation of lands, and as a rule such an irriga

tion and water-supply system is not sufficient to meet the requirements of the desert-land law. 44–150

30. Apart from and independent of the requirement of adjustment to a resurvey, desert-land entries made in Imperial Valley, Calif., are no exception to the rule permitting the amendment of an entry where the entryman has improved a tract of land which he had endeavored in good faith to properly describe in making the entry. 45–50

31. Where land is adapted solely to the production of deciduous fruits, such fruits may be considered "ordinary agricultural crops" within the meaning of the desert-land law; and a showing by a desert-land entryman that he has an adequate water supply to successfully irrigate and cultivate his land for the production of deciduous fruits is sufficient to meet the requirements of the law. 45–481

32. The impossibility of effecting reclamation of the land embraced in a desert-land entry is not, of itself, ground for repayment. 46–71

33. An unperfected desert-land entry is property which will pass to a trustee upon a voluntary assignment in bankruptcy. 46–82

34. An unperfected desert-land entry is personal property which, upon the death of the entryman, passes to the executor or administrator of the decedent's estate, and a relinquishment executed by an executor or administrator must be in strict accord with the rules governing the administration of estates of deceased persons. 48–26

35. The provision in the act of April 30, 1912 (37 Stat. 106), that "the Secretary of the Interior may in his discretion in addition to the extension authorized by existing law grant to any entryman under the desert land laws a further extension of time within which he is required to make final proof," does not preclude the granting of such extension of time by the Commissioner of the General Land Office, subject to the supervisory authority of the Secretary. 46–201

36. A desert-land entryman, believing himself unable to submit acceptable final proof, relinquished his entry, without intention of severing his connection with the land, having previously made arrangements with a railway company to scrip it for his benefit. The scrip location could not be consummated, and a third person, having notice that the land was improved and adversely claimed, made homestead entry thereof. *Held*, That such entry is subject to cancellation because of the paramount right of the desert-land claimant, whose relinquished entry, upon cancellation of the homestead entry, may be reinstated. 46–256

37. The act of February 27, 1917, validates a desert-land entry for 160 acres made prior thereto by one who at the time was holding an entry for 320 acres under the enlarged homestead act, where no attempt was made to conceal the existence of the previous entry. 48–135

38. The act of February 27, 1917, which extended the act of August 30, 1890, by permitting one who has made an enlarged homestead entry for 320 acres, to make a desert-land entry for 160 acres, does not authorize the allowance of any entry under the desert land law in favor of one who has entered and perfected title to, or is holding an entry or entries of more than 320 acres of agricultural land. 50–560

39. Desert entries will not be allowed in areas where there is no persuasive geologic, topographic, or other evidence tending to furnish a reasonable assurance of an existing, sufficient, and economically available water supply, and an exception to this rule will not be made on the ground that the lands are situated in an undeveloped field. 48–554

40. The resident citizenship qualification imposed by section 8 of the act of March 3, 1891, is sufficiently met by a desert-land entryman, if, at the time of making entry, he had established his residence in the State in which the land is situated and his acts

indicated a *bona fide* intent to make his future home in that State, although he thereafter temporarily maintained his domicile elsewhere. 49–114

41. The fact that the collection of penalties for nonpayment of taxes assessed against unentered public lands is not authorized by the act of August 11, 1916, does not warrant the allowance of a desert-land entry prior to the payment of all taxes and assessments properly levied. 49–160

42. Where a desert-land entry has been allowed for unsurveyed lands with descriptions in terms of a future survey, failure of the claimant, upon the filing of the plat of survey in the local United States land office, to adjust his claim to the survey should not be held a ground for cancellation of the entry, but, upon default in making such adjustment, the local officers will make the adjustment themselves. 49–636

43. A desert-land entry does not come within the confirmatory provision of section 7 of the act of March 3, 1891, if the final proof shows on its face, at the time of its submission, incomplete and unsatisfactory compliance with law as to appropriation of a water right, and the entryman is required, before the expiration of the two-year statutory period, to remedy the defect or suffer cancellation of the entry. 50–336

44. An application, based upon a canceled desert-land entry for 320 acres, to make an exchange of entry under the act of January 27, 1922, for public land classified as coal land, must be controlled by the act of June 22, 1910, which limits the area of classified coal land that may be acquired under the desert land laws to 160 acres with reservation of the coal deposits, unless the applicant assumes the burden of proof and shows that the land is noncoal in character. 50–374

45. Lands in an unperfected desert-land entry are not subject to levy and sale under an execution to satisfy a judgment against the entryman. 51–474

46. The provision in section 1 of the act of July 17, 1914, which limits a desert entry made under that act to 160 acres, has reference only to lands withdrawn, classified, or valuable for one or more of the minerals named therein, and it does not preclude inclusion within such an entry of other lands, nonmineral in character, which, together with the mineral lands, exceed in the aggregate 160 acres. 51–603

II. Entry

47. Regulations of May 13, 1916, under act of April 11, 1916, relating to desert-land entries in Chuckawalla Valley. 45–86

• 48. The assignee of a desert-land entry, otherwise qualified, has the same right of second entry based thereon, under the act of February 3, 1911, that the original entryman would have had if no assignment had been made, regardless of whether the assignment to him was made prior or subsequent to the date of the act. 41–82

49. A desert entryman who had actually abandoned his entry, and which was subject to cancellation on the ground of abandonment at the date of the act of March 26, 1908, is within the provisions of that act, and is not disqualified to make second desert entry thereunder merely because his abandoned entry is still of record. 41–373

50. A desert-land entryman is not entitled, in making annual proof, to credit for improvements placed upon the land by a former entryman. 41–601

51. The rule announced in Herren *v.* Hicks (41 L. D. 601) that no expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry, applies to second entries as well as to original entries; and a desert-land en-

tryman who relinquishes his entry and makes second entry of the same land under the act of February 3, 1911, can not receive credit on annual proofs upon the second entry for expenditures made on account of the original entry. 42–523

52. The initial payment of 25 cents per acre required of a desert-land entryman at the time of filing his application is within the term "filing fees," as used in the act of February 3, 1911; and the fact that an entryman received for his relinquishment the amount of such initial payment does not disqualify him to make second desert-land entry under that act. 41–652

53. A pending contest against a desert-land entry will not prevent the allowance of an application for extension of time under the act of March 28, 1908, where the application is based upon facts which bring the case within the provisions of said act. 41–603

54. Where a desert entry of more than 160 acres has been allowed for lands withdrawn for examination and classification with respect to coal value, the entryman will be required, under the provisions of sections 1 and 2 of the act of June 22, 1910, to amend his entry so as to reduce the area to 160 acres and to show that the application is made in accordance with and subject to the provisions and reservations of that act. 41–319

55. Section 5 of the act of June 27, 1906, authorizing an extension of time for compliance with law on desert entries within reclamation projects, applies only to entrymen who have been directly or indirectly delayed or prevented from carrying out their plans and works for obtaining a water supply by creation of a reclamation project. 41–377

56. A desert-land entryman may properly include in his entry a legal subdivision necessary for use for reservoir purposes, or for other necessary part of the irrigation system adopted by him, notwithstanding less than one-eighth of the area thereof is susceptible of irrigation from such system. 42–411

57. Where a desert-land entryman furnishes the best evidence obtainable of the possession of a water right sufficient to properly irrigate and reclaim the land embraced in his entry, such evidence may be accepted without requiring a certificate from the State engineer as to such water right, where it is shown that such certificate can not be furnished because the State officers have not determined the water rights in the stream from which the water is taken and will not in regular course be able to do so for several years. 44–212

58. In view of the provisions of the act of March 28, 1908, the Land Department is without authority to receive, entertain, suspend, or allow an application to make desert-land entry for unsurveyed land. 45–188

59. Where land, at the time of application therefor under the desert-land law, is practically all covered by the waters of the Salton Sea, such application should be rejected. 45–599

60. The provision contained in section 8 of the act of March 3, 1891, specifying that no person shall be entitled to make entry of desert land except he be a resident citizen of the State in which the land is situated, is not a continuing requirement, coextensive with the life of the entry, but merely one which must exist at the time entry is made. 49–114

61. The desert-land law requires that one applying to make entry thereunder must be at the time that the application is filed an actual resident citizen of the State or Territory in which the land sought to be entered is located, and mere intention to establish residence is not sufficient. 51–401

III. Submission of Proof

62. Instructions of May 21, 1912, under act of April 30, 1912, authorizing extension of time to submit desert-land proof. 41–28

63. Instructions of April 22, 1913, concerning evidence of water rights in final proofs on desert-land entries. 42–99

64. Instructions of April 24, 1914, under act of October 30, 1913, authorizing extension of time for proof on desert-land entries. 43–227

65. Instructions of February 3, 1922; proofs on desert-land entries by incapacitated soldiers; act of December 15, 1921. (Circular No. 805.) 48–427

66. No expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry; and expenditures once credited can not be again applied. 41–601

67. A desert-land entryman is not required to make oath as to annual expenditures upon or for the benefit of his entry, but proof of such expenditures may be made by "two or more credible witnesses" resident in the State and vicinity where the land is situated. 42–165

68. A desert-land entryman is not entitled, in making annual proof, to credit for improvements placed upon the land by a former entryman. 46–203

69. Departmental decision in Herren *v.* Hicks (41 L. D. 601), to the effect that a desert-land entryman is not entitled, in making annual proof, to credit for improvements placed upon the land by a former entryman, is not applicable to proofs submitted and approved prior to the date of that decision. 43–507

70. The provision of section 5 of the act of March 3, 1891, that a desert-land entryman shall file during each year proof of the expenditure of $1 per acre, is mandatory; and neither the Commissioner of the General Land Office nor the Secretary of the Interior has authority to extend the time within which to make such expenditure and furnish proof thereof. 45–172

71. In determining when annual and final proofs become due in connection with desert-land entries embracing lands in the Chuckawalla Valley, in the State of California, described in the acts of June 7, 1912, and March 4, 1913, the period between June 7, 1912, and May 1, 1915, should be excluded and the statutory period of the entry extended accordingly. 45–24

72. An applicant for extension of time under the act of March 28, 1908, for the submission of final proof upon a desert-land entry, is not required to show that he owns a water right sufficient for the irrigation of his entire entry. 43–282

73. Where at the time of making desert-land entry the entryman in good faith expected to obtain water by means of ordinary surface wells, but subsequently ascertained that such wells would not furnish an adequate supply to irrigate the land, such unforeseen failure of his proposed water supply is proper ground for extension of time under the act of March 28, 1908. 43–241

74. The act of June 27, 1906, authorizing an extension of time for compliance with law on desert entries where the entryman has been hindered in the reclamation of the land by reason of a withdrawal under the reclamation act, has no application where the waters from which it is proposed to supply the Government project were withdrawn from all appropriation prior to the date of the entry, notwithstanding the withdrawal embracing the land was not made until after the entry. 43–189

75. The construction of an artesian well, with a view to procure water for the reclamation of a desert entry, is a construction of irrigating works within contemplation of section 3 of the act of March 28, 1908, and the acts of February 28, 1911, and April 30, 1912, and failure, after diligent effort, to obtain water by means of such attempted artesian well, without fault on the part of the entryman, is suffi-

cient ground for extension of time as provided by said acts. 43–189

76. While a desert-land entryman is required to show upon final proof that he has cultivated and irrigated at least one-eighth of the land embraced in his entry, it is not necessary to show that one-eighth of each separate legal subdivision has been cultivated and irrigated, but all the required cultivation and irrigation may be upon any one or more subdivisions. 43–269

77. The procedure for the appropriation of water provided by the act of March 9, 1907, of the Legislature of Montana, is not exclusive and mandatory and does not bar appropriation by actual diversion and use; and the Land Department will recognize as *prima facie* sufficient to support final proof upon a desert-land entry for lands in the State of Montana an appropriation by actual diversion and use of water, whether from an adjudicated or an unadjudicated stream, provided it shall appear by satisfactory evidence that there are unappropriated waters sufficient to satisfy such appropriation and to permanently reclaim the lands. 43–449

78. The cost of fencing may properly be credited as an expenditure under the desert-land law when the fence is appurtenant and subservient to the particular land covered by the desert-land claim and was erected primarily for the purpose of protecting and preserving the means employed in the irrigation and reclamation of the land; and where a fence is constructed around a group of contiguous claims, only such portions thereof can be credited to any particular claim of the group as are shown to be permanent improvements upon and appurtenant and subservient to the land embraced in that claim. 44–161

79. The desert-land law requires that an entryman thereunder shall reclaim the land embraced in his entry before he is entitled to patent; and the mere fact that the Land Department recognized as a sufficient source of water supply the water company with which the entryman had a contract for water to irrigate the land, and that the entryman made expenditures on the faith of that recognition, does not warrant the acceptance of final proof upon the entry where it appears that the company's works, as now existing, are insufficient to insure a water supply for the permanent reclamation of the land. 45–14

80. Mutual water companies, organized by the water users themselves, and not engaged in the sale of water or water rights, do not come within the act of the Idaho Legislature of March 13, 1909, regulating and controlling the sale of water rights within that State; and a desert-land entryman within that State, whose source of water supply is such a water company, will not be required to furnish the certificate of the State engineer showing that such company is authorized to sell water. 45–180

81. Where the final proof offered in support of a desert-land entry shows the ownership of a sufficient water right, construction of necessary ditches, and that one-eighth of the land has been irrigated and cultivated, it is not incumbent upon the claimant to show, as a matter of establishing the element of good faith, that the crop produced thereon was reasonably remunerative. 47–621

82. Where final proof is submitted, but final payment and adjustment to the plat of survey are not made, equitable title does not vest in the entryman and the assignment of such entry is governed by the regulations relating to assignments. 48–519

83. The mere planting of a crop does not fulfill the requirement of the desert-land law, and while it is not always necessary to show that the crop was remunerative, yet it is incumbent upon the entryman to show that some sort of a crop was raised

by irrigation or that a *bona fide* effort was made with that end in view. 48–605

84. Good faith is a controlling element in determining the question of compliance with the requirement of the desert land law as to cultivation, and in administering the law, the Commissioner of the General Land Office is not only authorized, but it is his imperative duty under section 7 of the act of March 3, 1891, to require such additional proofs to be made within the period prescribed by law as may be necessary to show the character and extent of the cultivation. 48–605

85. The instructions of April 26, 1924, Circular No. 933, declaring that the cost of clearing by the process of "railing" shall not be an acceptable expenditure for the reclamation of desert lands, will not be applied retroactively, where the work of clearing was performed in good faith and proof thereof submitted at a time when it was the practice to allow credit for such work. 51–564

IV. Assignments and Assignees

86. Instructions of October 26, 1921, relating to desert-land assignments under the acts of March 4, 1915, and March 21, 1918. 48–241

87. The assignment of a desert-land entry is not an abandonment thereof; and one who has exhausted his right under the desert-land law by making entry, does not, therefore, by assignment thereof, become qualified, under the act of February 3, 1911, to take another desert-land entry by assignment. 41–9

88. By taking an assignment of a desert-land entry the assignee is substituted for the original entryman, and his rights under the entry are the same that they would have been had he made the entry in the first instance. 41–82

89. The making and subsequent assignment of a desert-land entry will not be held to disqualify the entryman from taking a reassignment of the same land from the assignee, such reassignment being regarded as a mere rescission of the assignment. 42–460

90. The assignee of a desert-land entry, otherwise qualified, has the same right of second entry based thereon, under the act of February 3, 1911, that the original entryman would have had if no assignment had been made, regardless of whether the assignment to him was made prior or subsequent to the date of the act. 41–82

91. Where a desert-land entry upon which final certificate had not issued passed through the hands of successive persons, some of whom were not qualified to take a desert entry by assignment, and finally came into possession of one who is so qualified, he may be recognized as entitled to hold the entry, notwithstanding such intervening disqualified assignees. 42–90

92. Where a desert entry has been divided and half assigned to each of two qualified assignees, it is competent for a qualified person to take an assignment of both halves of the divided entry, either by joint assignment from the two holders or by separate assignment from each of the portion held by him. 42–94

93. An unperfected desert-land entry is property which will pass to a trustee upon a voluntary assignment in bankruptcy. 46–82

94. A contest against a desert entry based on the charges that the assignee was disqualified to take by assignment and that the entryman had defaulted, must be sustained where the assignment had been made prior to final payment and adjustment to the plat of survey, and no answer to the contest allegations was made after due service of notice. 48–519

95. Section 20 of the act of February 25, 1920, did not modify or limit the right of assignment of a desert-land entry authorized by preexisting law or deprive an assignee of any rights or privileges conferred upon the original entryman, and the recognized

assignee of one who made a desert-land entry of lands not withdrawn or classified as mineral at the time of entry is entitled to a preference right to prospect for oil and gas, notwithstanding that the assignment was made subsequent to January 1, 1918. 48–237

96. An assignment of a desert-land entry to one who is qualified to make an entry of that character is not rendered invalid or ineffective because he holds under a transfer from a mesne assignor who is not so qualified, notwithstanding that section 2 of the act of March 28, 1908, declares that assignments to disqualified persons and to associations shall not be allowed or recognized. 50–139

97. Where a desert-land entry is assigned to several individuals, and there is no evidence to show that the assignees have formed a union or organization for the prosecution of some enterprise, such transfer is not to be construed as an assignment to an association within the prohibition of section 2 of the act of March 28, 1908. 50–139

V. Section 5, Act March 4, 1915

98. Regulations of April 13, 1915, under section 5 of the act of March 4, 1915, for the relief of desert-land entrymen. 44–56

99. Instructions of May 9, 1916, supplementing instructions of April 13, 1915, under the act of March 4, 1915, providing for the relief of desert-land entrymen. 45–84

100. Regulations of May 22, 1918, relative to relief of desert-land entrymen, act of March 4, 1915, as amended by act of March 21, 1918. (Circular No. 602.) 46–388

101. Section 5 of the act of March 4, 1915, providing for the relief of desert-land entrymen, is applicable to entries otherwise within its terms notwithstanding the time within which final proof might be submitted thereon had expired at the date of the passage of the act. 44–476

102. No such adverse right was acquired by an affidavit of contest against a desert-land entry, filed after the expiration of the period within which final proof might have been submitted, and upon which no action was taken by the Land Department, as will bar relief of the entryman under the act of March 4, 1915. 44–477

103. The benefits of the act of March 4, 1915 (38 Stat. 1138, 1161), are applicable to entries otherwise within its terms notwithstanding the intervention of a contest. 46–203

104. Section 5 of the act of March 4, 1915, providing relief for desert-land entrymen, applies to all pending entries, whether contested or noncontested, and extends to cases brought and prosecuted to final hearing before the local office, at the expense of the contestant, prior to the passage of the act. 44–500

105. The provision in section 5 of the act of March 4, 1915, providing for an extension of time within which desert-land entrymen may submit final proof of reclamation, is held to apply to a case coming within its purview notwithstanding the pendency of a contest against the entry at the date of the passage of the remedial act. 44–157

106. Section 5 of the act of March 4, 1915, permits the perfection of certain desert-land entries in like manner as homestead entries, but a desert-land entry perfected under such act in the manner required of homestead entrymen is not transmuted into a homestead entry, but remains a desert-land entry subject to a new kind of proof. 45–15

107. Section 5 of the act of March 4, 1915, providing for the relief of desert-land entrymen, is applicable only to lawful desert-land entries made prior to July 1, 1914, and pending at the date of the act; and has no application to an entry canceled prior to the act for failure to make the necessary proof and which had not been reinstated. 45–187

108. A desert-land application presented prior to and pending at the date of the act of March 4, 1915, based upon rights initiated prior to July 1, 1914, and which should have been allowed when presented, and will, when allowed, relate back to the initiation of the claim, is within the spirit of the remedial provisions of section 5 of said act, and the applicant is entitled to avail himself of the relief accorded thereby. 45–200

109. Expenditure by a desert-land entryman in good faith in a reasonable belief that it would tend to reclaim the land from its desert state is acceptable in support of a claim for relief under paragraphs 2 and 3 of the act of March 4, 1915, notwithstanding it may not have been such as would satisfy the requirements of annual proof. 46–203

110. While a desert-land entryman, in making annual proof, is not entitled to credit for improvements placed upon the land by a former entryman whose relinquishment he has purchased, he may, in the event he invokes the benefits of section 5 of the act of March 4, 1915 (38 Stat. 1138, 1161), claim credit for money so expended. 46–413

111. Where a desert-land entryman after making the required expenditures, and being unable to reclaim the land, relinquished his entry and made second desert entry of the same land under the act of February 3, 1911, with the purpose of in good faith complying with the requirements of the desert land law, but made no additional expenditures under the second entry, he may receive credit for the expenditures made by him under his first entry for the purpose of availing himself of the remedial provisions of section 5 of the act of March 4, 1915. 45–217

112. In the construction of section 5 of the act of March 4, 1915, the good faith of a desert-land entryman will not be held to have been negatived by the fact that but a small portion of the land is practically susceptible of irrigation and that he has used, and apparently intended to use the land for grazing purposes in connection with his homestead entry for an adjoining tract. 48–135

113. A desert-land entryman's inability, for financial reasons, to obtain a water supply sufficient for the reclamation required by law, is not ground for relief under paragraph 3 or 4 of section 5 of the act of March 4, 1915. (38 Stat. 1138, 1161.) 46–40

114. A desert-land entryman who applies to purchase the land under the relief provisions of the act of March 4, 1915, need not show that he continued cultivation after the privilege of making the purchase was granted, if he has in good faith used the land for agricultural purposes for at least three years at any time since making his original entry, and has upon the tract permanent improvements conducive to the agricultural development thereof, of the value of at least $1.25 per acre. 48–145

115. Under the first of the last three paragraphs of section 5 of the act of March 4, 1915, the assignee of a desert-land entry of the class specified therein was entitled to the same benefits as the original entryman, regardless of the date of assignment, and Congress did not intend that the proviso to the amendatory act of March 21, 1918, should place any restriction with respect to limitation of assignment upon entries of that class. 48–241

116. A desert-land entryman who elects to acquire title under the relief provisions of the act of March 4, 1915, by complying with the requirements of the homestead law as to residence, cultivation, and improvements in accordance with the provisions of the third paragraph of section 5 of that act, is entitled to credit for residence maintained by him on the land at any time, either before or after the relief has been granted. 48–353

117. The obligations of a desert-land entryman who obtains permission to

perfect his entry pursuant to the act of March 4, 1915, are, with respect to residence and cultivation, personal and nonassignable, and it is beyond the power of a judgment creditor to substitute himself for the entryman through the levy of an execution upon the entry. 51–472

118. The benefits of the second and third paragraphs of section 5 of the act of March 4, 1915, as amended by the act of March 21, 1918, are not extended to assignees under assignments made after the latter date. 51–474

DESERTED WIFE

See HOMESTEAD, III.

DESIGNATION

See CLASSIFICATION OF LANDS; HOMESTEAD, XV, XVIII.

DEVISEE

See HOMESTEAD, IV.

DILIGENCE

See MINING CLAIM; OIL, GAS, ETC., LANDS, 50–348, 610, 652.

DISCOVERY

See MINING CLAIM; OIL, GAS, ETC., LANDS; PHOSPHATE DEPOSITS.

DISQUALIFICATION

See PRACTICE.

DIVORCE

See CITIZENSHIP, 45–1.

1. While the department does not attempt to attack collaterally the judgment of a court in issuing a decree of divorce, yet it is not precluded from determining whether a claimant is qualified to make homestead entry merely because in another jurisdiction she was given the status of one so qualified; and if it be found that for the purpose of acquiring title to public lands, such judgment was procured by fraud and collusion, the entry will be canceled. 46–492

DURESS

1. Where a homestead entryman was prevented from establishing residence by persons in occupation of the land embraced in the entry, such persons will not be heard to say that the entryman did not establish residence at the time he attempted to do so and was prevented by them. 43–344

EASEMENT

See OIL, GAS, ETC., LANDS, XV; RIGHT OF WAY; POWER SITES; RESERVOIR SITES.

ENLARGED HOMESTEAD

See HOMESTEAD, XV.

ENTRY

See PREFERENCE RIGHT, 49–1; PRIVATE ENTRY; RECORDS, 50–299; REPAYMENT, 50–418, 429.

1. Instructions of December 18, 1912, respecting contests against final entry. 41–412

2. For land in more than one district. See LAND DISTRICT. 45–486

3. See instructions of March 24, 1917, under act of February 20, 1917. (Circular No. 540.) 46–70

4. By soldiers under 21 years of age. (Circular No. 622.) 46–451

5. Instructions of March 22, 1922, re change of entries pursuant to the act of January 27, 1922. (Circular No. 817.) 48–594

6. Instructions of December 3, 1924, administrative ruling relating to applications under the act of January 27, 1922, for change of entries. (Circular No. 967.) 50–684

7. Instructions of June 8, 1926, change of entry; act of January 27, 1922, repealed. (Circular No. 1070.) 51–463

8. Where a married woman, a minor, is deserted by her husband, she does not thereby, so long as the disqualification of minority exists, become qualified, as a deserted wife, to make homestead entry, unless she be the head of a family. 41–510

9. Amendment of an entry may be allowed under paragraph 10 of the circular of April 22, 1909, if application therefor be filed within one year from discovery of the facts justifying such amendment. 42–55

10. Only the entryman himself, or some one claiming under him, may complain of the action of the Land Department in canceling an entry, and a stranger will not be heard to question it. 42–503

11. The provision in the act of March 4, 1911, which precludes reinstatement of an entry where another "entry is of record covering such land," contemplates a valid pending entry. 42–244

12. A possessory right is acquired by settlement and entry as against all except the Government; and so long as an entry remains of record no rights can be acquired as against the entryman by settlement upon and occupation of the land, notwithstanding the statutory life of the record entry has expired. 43–344

13. A deed is not effective until delivery; and where an intending homestead entryman executes deeds for land owned by him in excess of 160 acres, and makes entry before the deeds are delivered, such entry is invalid because of the disqualification of the entryman by ownership of more than 160 acres of land. 44–52

14. Where by mistake in description entry is made for land not intended to be taken, and amendment is allowed to the tract desired, the entry dates from the amendment. 44–72

15. An agreement made before entry to acquire title under the nonmineral public land laws with a view to conveyance of such title to another when secured is fraudulent. 45–315

16. A claimant is entitled to personal or constructive notice of the reinstatement of his canceled entry, which is not thereafter subject to contest upon a charge of abandonment until six months from receipt of notice. 46–172

17. To charge a claimant with constructive notice of the reinstatement of his canceled entry, upon his failure to call for the registered letter containing notice thereof, such letter must have remained in the post office of the claimant's record address, subject to call, during the entire 30-day period required, and then returned to the land office as uncalled for. 46–172

18. Where an entry is relinquished without consideration following discovery that, because of the character or small area of the land, a living can not be made thereon, and it further appears that no vacant contiguous land can be added, the entryman will be deemed to have abandoned the entry "because of matters beyond his control." 46–224

19. The word "entry," when used in the statutes and departmental regulations relating to amendments, is to be construed in its generic sense and treated as signifying an appropriation of public lands generally. 48–380

20. Cases will not be reopened under the doctrine announced in Jacob Harris (42 L. D. 611), where the proceeding has been closed and the entry canceled, without regard to the time that has elapsed since the final action of the Land Department; but cases in which the claimants have asserted in the courts their rights under entries which have been canceled as the result of proceedings begun more than two years after the issuance of receiver's receipt upon final entry, and have diligently and continuously prosecuted their claims, but relying upon the decision in the Harris case have dismissed their suits in court for the purpose of invoking the supervisory authority of the department, are not regarded as coming within the terms or spirit of this rule. 43–262

21. The proviso to section 7 of the act of March 3, 1891, does not operate to confirm an entry against an act of Congress passed prior to the expiration of two years from the date of the issuance of the receiver's receipt upon

final entry; and where within the two-year period the land was "classified, claimed, or reported as being valuable for coal," and also within such period the act of March 3, 1909, was passed, the entry is not confirmed against said act, and patent if issued must be in accordance therewith; but in case more than two years had elapsed from the date of the issuance of the receiver's receipt upon final entry prior to classification, claim, or report that the land was valuable for coal, or prior to the passage of the act of March 3, 1909, nothing would remain for the Land Department save the ministerial duty of issuing patent. 43–294

22. A change of entry under the act of January 27, 1922, for 160 acres, based upon a canceled desert-land entry for 320 acres, exhausts the right of the entryman to make a further change under the provisions of that act. 50–374

23. The act of January 27, 1922, does not authorize the Secretary of the Interior to permit one to select and transfer payment to 640 acres designated under the stock-raising homestead act in exchange of an entry made under section 2289, Revised Statutes, for 160 acres. 50–635

24. A change of entry under the act of January 27, 1922, may be allowed for two or more incontiguous tracts subject to entry provided that none of the tracts is part of an area approximately equal to that embraced in the canceled entry. 50–636

25. The act of January 27, 1922, was remedial legislation for the benefit of one, other than the original entryman, who had been permitted to enter land formerly in a confirmed entry, erroneously canceled, but it did not contemplate that the change of entry provision should extend to a claimant who is also the present holder under another form of entry. 51–245

26. A purchase of public land under section 5 of the act of May 20, 1908, is not in any sense a homestead entry; it is, however, to be classified as an entry under the agricultural land laws. 51–60

27. The act of June 22, 1910, authorizes only agricultural entries on lands withdrawn or classified as coal lands or which are valuable for coal, and it can not be invoked in favor of one claiming other mineral deposits in those lands. 51–424

EQUITABLE ADJUDICATION

See CONFIRMATION; HOMESTEAD, 42–579; PATENT, 50–185; TIMBER AND STONE ACT, 42–592.

1. Instructions of October 17, 1922, Board of Equitable Adjudication, act of September 20, 1922. 49–323

2. The verification of an application for patent to a mining claim by an attorney in fact for the claimant, at a time when the claimant himself is both resident and physically within the land district, is unauthorized, and entry allowed upon such application is invalid and can not be submitted to the Board of Equitable Adjudication. 41–614

3. The reference of a case to the Board of Equitable Adjudication is a matter resting within the discretion of the Land Department and can not be claimed as a matter of right by an entryman. 42–438

4. One who files a contest charging default subsequent to the submission of proof is merely a protestant, and acquires by virtue of such contest no such adverse claim as will prevent confirmation of the entry by the Board of Equitable Adjudication. 43–344

5. Section 2325, Revised Statutes, contemplates that notice of an application for patent for a mining claim shall be posted within the exterior limits of the area applied for; and the posting of notice outside of a claim, and 800 feet distant therefrom, is not such a substantial compliance with the requirements of the law as will warrant submission of the entry to the Board of Equitable Adjudication. 43–396

6. Under the act of September 20, 1922, which amended section 2450, Revised Statutes, the Secretary of the Interior and the Commissioner of the General Land Office constitute a board with authority to give equitable adjudication in cases involving suspended entries, for the purpose of determining whether patents shall issue, where a substantial compliance with the governing law is shown by final proofs which are defective because of some error or informality resulting from ignorance, accident, or mistake on the part of the entryman. 49–561

7. A mere pending application to make a homestead entry is not an "entry" within the purview of section 2450, Revised Statutes, as amended by the act of September 20, 1922, and questions relating to its allowance or rejection do not come within the jurisdiction of the Board of Equitable Adjudication. 49–561

8. The confirmation by the Board of Equitable Adjudication of entries in conflict with a duly asserted Mexican grant, the claim under which has never been extinguished, is prohibited by sections 2451 and 2457, Revised Statutes. 49–562

9. The function of the Board of Equitable Adjudication is to give equitable consideration only to those homestead entries which have received as favorable action by the Land Department as the law permits, and it is not within its jurisdiction to consider, on appeal or otherwise, cases in which adverse action amounting to rejection or cancellation has been taken. 49–562

EQUITY

See MORTGAGE, 48–582; SUPERVISORY AUTHORITY OF SECRETARY.

1. Where a claimant for a tract of public land appeals to the letter of the law as against an adverse claimant, he must himself stand or fall by the letter of the statute. 42–113

ESKIMOS

See ALASKA; TOWN SITE, 51–501.

1. Instructions of May 16, 1925, allotments to Indians and Eskimos in Alaska; Circular No. 491, modified. (Circular No. 1006.) 51–145

ESTOPPEL

See APPEAL, 50–5; OIL, GAS, ETC., LANDS, 49–235; 50–406; SCHOOL LANDS, 48–384; 49–341; WAIVER, 50–406.

1. The rule of estoppel by adjudication is applicable to the administration of the laws of the United States by its executive officers to the same extent as it is to the final determination of controversies in the courts. 49–660

EVIDENCE

See BURDEN OF PROOF; CONTEST, 1; MINING CLAIM, 50–6, 577; PRACTICE, 46–85, 473; 50–149, 167; SCHOOL LANDS, 49–212; 50–219, 231, 516; SELECTION, 49–212, 341, 377; 50–583.

1. Instructions of May 9, 1913, governing the taking of depositions. 42–160

2. A special agent's report upon an entry is not evidence and can not be given evidential value as against any rights or claims asserted by the entryman; and where an entryman, after denying the charges based upon a special agent's report and applying for a hearing, withdraws such denial and application for hearing, such action constitutes at most an admission of the truth of the charges contained in the notice served upon him, but does not constitute a confession that the statements and assertions made in the special agent's report are true. 43–193

3. The deposition of a witness taken under rule 20 of Practice is not ad-

missible in evidence where the witness himself is actually present at the hearing and is ready and able to testify. 44–41

4. It is incumbent upon an applicant for patent or entryman to submit such evidence as may be required by law, regulations, or ruling of the Land Department, to show that the land is of the character subject to his claim, and that he has complied with the law and regulations with respect thereto. 41–655

5. The department can not recognize as binding upon it any stipulation entered into at a hearing by special agents and attorneys for the parties in interest which may preclude the consideration in the case of any question vital to the validity or regularity of the claim involved. 41–655

6. Assay certificates, purporting to show the mineral values of samples taken from a lode mining claim, when not supported by the testimony of the assayer or properly connected with the samples, are to be treated merely as hearsay evidence and entitled to but slight consideration in the determination of questions relating to discovery. 49–629

7. The fact that an application for an oil and gas prospecting permit was deposited in the post office on a certain day and at a certain hour, does not, when wholly unsupported by other evidence, create a statutory presumption, such as obtains in certain cases involving mere notices to individuals, that the application was delivered in due course. 50–413

8. Where an agricultural entryman whose application for reclassification of the lands within his unrestricted entry, subsequently classified as mineral, has been denied, demands a hearing, an application for an oil and gas prospecting permit filed by him for the purpose of protecting his rights as against other applicants can not be taken as an admission that the land has prospective oil and gas value. 51–447

EXCHANGE OF LANDS

See INDIAN LANDS, 45–492, 509; NATIONAL FORESTS, 50–261, 268, 435; 51–69, 133; NATIONAL PARKS, 50–662.

1. Revised regulations of February 27, 1915, governing exchange of lands within Indian reservations for public lands under the act of April 21, 1904. 43–565

2. Instructions of May 27, 1925, exchange of lands in the additions to the Navajo Indian Reservation, Ariz. (Circular No. 1012.) 51–152

3. Instructions of September 8, 1925, exchange of lands in the Walapai Indian Reservation, Ariz. (Circular No. 1029.) 51–192

4. The filing of a selection under the act of April 21, 1904, authorizing the selection of public lands in exchange for lands in Indian reservations, constitutes an appropriation of the lands within the meaning of the act of June 20, 1910, making an additional grant of school lands to Arizona, and said latter act therefore furnishes no obstacle to the consummation of such selection pending at the date of its passage. 41–96

5. Selections under the exchange provisions of the act of July 1, 1898, based upon uncompleted claims relinquished under the act because in conflict with the grant to the Northern Pacific Railway Company, must in every instance be confined to one transaction and to lands in a compact body in one land district; but selections based upon completed claims relinquished under that act need not be confined to a single transaction and may embrace noncontiguous tracts in different land districts. 41–271

EXECUTIVE DEPARTMENT

1. An executive department of the Government has no legislative power, and must leave to Congress and the courts the rectification of any evils that may flow from its administration of the law. 42–611

EXEMPTION

See HOMESTEAD, 49–114; INDIAN LANDS, 50–691.

EXPATRIATION

See CITIZENSHIP, 50–205.

FARM LABOR

See CONTEST, 48–179; 49–241.

FARM UNIT

See RECLAMATION.

FEDERAL EMPLOYEES

1. Instructions of April 12, 1924, prohibition against Federal employees holding interests in Indian oil and gas leases. 50–412

FEE PATENT

See INDIAN LANDS, II.

FEDERAL POWER COMMISSION

See POWER SITES; RIGHT OF WAY, 51–41; WATER RIGHT.

1. Instructions of November 1, 1926, applications under Federal water power act; withdrawal of public lands; practice. 51–613

2. The Federal Power Commission may legally grant licenses for power projects on any of the lands in Porto Rico which belong to and have been reserved by the United States, but it is without that authority with respect to all other lands of that island, inasmuch as they are not "public lands of the United States." 51–54

FEES

See AFFIDAVIT; FINAL PROOF, 46–244; HOMESTEAD, 45–189; 46–18; 49–461, 492, 608; OATHS, 51–483; 572; OFFICERS; RECLAMATION, 50–268, 506; REPAYMENT, 49–344, 533; 50–576, 589; VESTED RIGHTS, 50–326, 664; WITNESSES, 42–170; 51–484.

1. Paragraph 9 of regulations of March 24, 1905, governing fees for administering oaths, etc., amended June 23, 1913. 42–201

2. Circular of April 24, 1914, respecting fees for record information and transcripts of records. 43–226

3. Instructions of August 5, 1914, concerning fees for lists of lands for taxation. 43–362

4. In coal-land cases, see Circular of July 7, 1917. 46–138

5. Of local officers, see paragraph 111 *et seq.*, Circular No. 616. **46–513**, 541

6. Circular of November 14, 1914, concerning homestead fees. 43–449

7. The term "filing fees" as used in the act of February 3, 1911, includes any moneys required by law to be paid at the time of the making of a homestead entry; and an entryman of former Indian lands who relinquished his entry for an amount not exceeding the fees and commissions and the installment of the purchase price paid by him at the time of making the entry is within the purview of that act. 41–420

8. Instructions of September 10, 1923, charges for carbon copies of testimony in contest cases; instructions of May 28, 1910 (38 L. D. 615), modified. (Circular No. 904.) 50–133

9. The term "deposition" as used in section 2294, Revised Statutes, as amended by the act of March 4, 1904, prescribing the fees that may be charged for each "deposition of claimant or witness," refers to final proofs generally and annual proofs on desert-land entries. 42–195

10. Section 29 of the act of June 20, 1910, contemplates the payment by the State of Arizona of a fee of $1 to the register and receiver for each final location or selection of 160 acres under its grants for university or other purposes, but does not contemplate the payment by the State of $1 to *each* of such officers. 42–294

11. A relinquishment of an entry is not required to be acknowledged, and there is no Federal statute establishing the fee for such an acknowledgment;

but in case a relinquishment is acknowledged, the maximum charge therefor should be the same as the fee fixed by the statutes of the State for taking the acknowledgment to a deed. 42–196

12. An affidavit is "made before" an officer within the meaning of section 2294, Revised Statutes, as amended March 4, 1904, when it is subscribed and sworn to before him; and the statute does not contemplate that that term shall include the preparation or drafting of the affidavit. 42–195

13. Where a United States commissioner renders services for applicants or entrymen under the public-land laws beyond his official duties under the law, such as the preparation or drafting of papers, furnishing information as to the description of lands, the status of entries, etc., he is entitled to receive such compensation therefor as may be agreed upon by the parties, or, in the absence of agreement, as the work is reasonably worth, provided it is clearly understood by the applicant or entryman that such charges are separate and distinct from the charges for official services under the law. 42–196

14. A United States commissioner is without statutory authority to receive moneys on account of fees and commissions; and where these are deposited with him in connection with the making of final proof for transmission to the local officers he acts merely as agent for the entryman, who can not be held to have done all that the law requires to entitle him to patent and a vested right to the land until such fees and commissions have been paid to the local officers. 46–4

15. The presentation of an application in due form by a contestant to enter lands embraced within a prior canceled entry in the exercise of his preference right does not have any segregative effect as to the land involved until the required fees have been tendered. 50–177

16. As neither the leasing act of February 25, 1920, nor the regulations thereunder specify the procedure to be followed where applicants for prospecting permits tender an insufficient filing fee, the general instructions of August 9, 1918, Circular No. 616, relating to the keeping of records and accounts, are applicable. 50–582

FENCING

See STOCK-WATERING RESERVOIRS, 49–577.

FILING

1. Circular of May 22, 1914, governing disposition of applications, filings, and selections for lands opened or restored to entry. 43–254

FILING FEES

See FEES; REPAYMENT, 43–72.

FINAL CERTIFICATE

See FINAL PROOF.

FINAL PROOF

See DESERT LAND, 48–519; 50–336; HOMESTEAD, 42–579; 48–274, 280, 289; 49–118, 135, 266, 461; 50–137, 613, 645; OFFICERS.

1. Instructions of October 24, 1912, respecting credit for prior payment upon second proof. 41–346

2. Instructions of May 21, 1912, under act of April 30, 1912, authorizing extension of time to submit desert-land proof. 41–28

3. Instructions of May 23, 1925, final proof on desert-land entries. (Circular No. 1011.) 51–149

4. Instructions of April 22, 1913, concerning evidence of water rights in final proofs on desert-land entries. 42–99

5. Instructions of August 27, 1913, concerning proof of citizenship in commutation proof under act of June 6, 1912. 42–338

6. Instructions of April 4, 1914, relating to selection of newspapers for publication of final proof notices. 43–216

7. Circular of November 13, 1914, under act of October 22, 1914, concerning proof on homestead entry by deserted wife. 43–445

8. Circular of January 12, 1915, concerning revised forms for final proofs on homestead entries. 43–494

9. Instructions of April 2, 1921; proofs on homesteads by incapacitated soldiers; act of March 4, 1921. 48–54

10. Instructions of February 3, 1922; proofs by incapacitated soldiers, act of December 15, 1921. (Circular No. 805.) 48–427

11. Instructions of February 9, 1922; stock-raising homestead final proof forms. 48–438

12. Instructions of March 23, 1923, execution of proofs, affidavits, and oaths before deputy clerks of courts, act of February 23, 1923. (Circular No. 884.) 49–497

13. Instructions of April 23, 1923, suspension of final proofs on homestead entries to await naturalization of entrymen. (Circular No. 891.) 49–538

14. Instructions of May 7, 1923, proofs, affidavits, and oaths, act of February 23, 1923. 49–585

15. The term "final proof" as used in sections 4 and 5 of the stock-raising homestead act contemplates a final proof which is complete and entitles the entryman to a final certificate and patent. 51–452

16. Instructions of May 8, 1923, proofs, affidavits, and oaths; supplemental instructions; act of February 23, 1923. (Circular No. 894.) 49–586

17. Final proof under the enlarged homestead act, covering both surveyed and unsurveyed land, can not lawfully be accepted, nor entry allowed, as to the unsurveyed land, until survey thereof has been made and approved. 41–424

18. Where final proof is rejected because of insufficient showing as to compliance with law, supplemental showing by *ex parte* affidavits may be accepted, without requiring new publication of notice, where the defect has since been cured and the Government is satisfied of the entryman's good faith. 43–66

19. In view of the provisions of the acts of June 6, 1912, and August 24, 1912, proof submitted upon a homestead entry made prior to the act of June 6, 1912, may be considered under either the act of June 6, 1912, or the law as it existed prior thereto, whichever may be found applicable to the facts shown. 43–196

20. Final proof may be submitted during the pendency of a contest and suspended until final determination thereof; and while such proof should not be considered in determining the merits of the contest it may be used for the purpose of cross-examination during the trial. 45–7

21. Under section 2294, Revised Statutes, proofs, affidavits, and oaths concerning entries of the classes specified in the statute may be taken before any of the officers therein named in the county, parish, or land district in which the land is situated; and the Commissioner of the General Land Office is without authority to forbid the local officers to authorize the taking of proofs before any officer named in the statute merely because his office is located in the same town as the local land office. 45–514

22. Section 2294, Revised Statutes, as amended March 4, 1904 (33 Stat. 59), does not permit the making of final proof outside the county in which the land lies, unless the officer before whom it is taken be the nearest or most accessible qualified officer within the land district. 46–72

23. No vested right is acquired by submission of final proof upon a homestead entry before a United States commissioner, and deposit of the requisite fees and commissions with him, prior to receipt thereof by the local officers. 46–4

24. The pendency of an application for reduction of the required area of cultivation under the provisions of the act of June 6, 1912, excuses an entryman from submitting final proof;

in support of the entry until final disposition is made of such application, and where the offer of final proof is thus delayed until after the expiration of the statutory period the entry need not be sent to the Board of Equitable Adjudication for confirmation. 46–415

25. Where the statutory period within which final proof upon a homestead entry may be submitted has not terminated, the Land Department may, upon the withdrawal of a contest predicated on the charge of abandonment, treat the matter as *ex parte* and permit the entryman to perfect the claim if the requirements of law have been satisfactorily fulfilled, even though such compliance was subsequent to the initiation of the contest. 48–232

26. Section 2291, Revised Statutes, as amended by the acts of June 6, 1912, and August 22, 1914, permits an entryman to make proof at any time when he can show compliance with the law as to residence and cultivation, provided that either his entry or his settlement has subsisted for three years, and nothing contained in the language used therein pertaining to leaves of absence is to be construed as requiring a lapse of three years from the establishment of residence. 49–153

FIRE-KILLED TIMBER

See Timber Sale.

FISH HATCHERY

See National Monuments.

FIVE CIVILIZED TRIBES

See Indian Lands.

FLATHEAD INDIAN LANDS

See Indian Lands, 44–28, 39, 195, 240; 48–59, 60, 468, 475, 529; 49–348; Town Site, 47–175.

FLORIDA, STATE OF

See Survey, 48–195.

1. Regulations of August 12, 1921, relative to adjustment of claims. 48–195

FOREST LANDS

See Forest Lieu Selection; Homesteads, XVII; National Forests.

FOREST LIEU SELECTION

See Laches, 50–420.

1. Instructions of August 4, 1921, under administrative order of April 23, 1921, with reference to State, railroad, and lieu selections. (Circular No. 768.) 48–172

2. Instructions of December 30, 1922, forest lieu selections, act of September 22, 1922. (Circular No. 869.) 49–383

3. Paragraph 18 of the regulations of July 7, 1902, requiring that "all papers and proofs necessary to complete a selection must be filed at one and the same time, and until they are presented no right will vest under the selection," has the effect to postpone the vesting of title as between the United States and the selector only; but as between the selector and third parties rights are determined primarily by the conditions existing at the date of making selection, and the first in right at that time continues so until default. 41–278

4. Upon the approval of a forest lieu selection the title to the base land relates back to the date that the deed of conveyance to the United States was recorded. 51–51

5. After the conveyance of base land to the United States no subsequent act of the prior holder of the title thereof or of any other person can invalidate the title thus acquired and, unless it appears that prior to the date of selection the Land Department had formally disclaimed title to the base land, a supplemental abstract down to the date of selection should not be required if the abstract on file shows

that at the time the deed of conveyance was recorded there were no adverse claims. 51–51

6. Where the right to make a selection is denied on the ground that the title of the selector to the base land was invalid, a subsequent assignee of the selector is entitled under the act of September 22, 1922, to a quitclaim deed from the United States, notwithstanding that the assignment would not have affected the title to the base land had the selection been allowable. 51–190

7. Where land has been conveyed to the United States under the act of June 4, 1897, acts of the prior holder, subsequent to such conveyance, can not affect the title so conveyed. 51–227

8. A selection under the act of June 4, 1897, becomes effective to vest a right in the selector to the selected lands immediately upon the filing of a complete application, including the nonmineral and nonoccupancy affidavit, notwithstanding that there may be delay in publication and posting of notice. 51–270

9. Selections under the act of June 4, 1897, are limited to "vacant land open to settlement," and a vested right is not acquired by a selector prior to his submission of proof that the selected land is unoccupied and nonmineral in character. 51–270

10. An incomplete application, even though ordinarily subject to the rules relative to curing defects, is not a "valid existing right" within the meaning of the Executive order of July 3, 1925, which withdrew certain lands and islands in the States of Alabama, Florida, and Mississippi. 51–270

11. There is no statutory right of contest against a forest lieu selection, and no preference right of entry inures to a contestant who procures the cancellation of a selection. 41–278

12. The right of contest and resultant preference right of entry accorded by the act of May 14, 1880, do not extend to forest lieu selections under the act of June 4, 1897. 43–119

13. It is within the sound discretion of the Commissioner of the General Land Office to permit individuals to participate in Government proceedings against forest lieu selections. 43–119

14. The Commissioner of the General Land Office is without authority to receive and pass upon proof to support a forest lieu selection of unsurveyed lands until the plat of survey of the township has been accepted by him, and his approval of a selection of unsurveyed lands confers upon the selector no equitable title; but where the selection is still of record at the date of the filing of the township plat, and the selector thereupon adjusts his selection thereto and submits the same for final approval, such submission is in effect a reselection, and the Land Department may permit the selection to be perfected as of that date, notwithstanding an intervening protest against the same charging that the lands were occupied at the date of the original attempted selection. 41–278

15. A forest lieu selection invalid because allowed for lands adversely occupied at the date of the selection is not validated by the subsequent abandonment of the lands by the occupant. 41–278

16. The right of lieu selection accorded by the act of June 4, 1897, is not transferable; and the presentation of such a selection by a successful contestant, not in his own right but as attorney in fact for another entitled to make a lieu selection under that act, is not a proper exercise of the preference right of entry, and no right inures to contestant by virtue of such attempted selection. 41–284

17. Abandoned cabins, houses, clearing, or other improvements of settlers who once occupied public land and afterwards left it, can not be considered such possession or occupancy as will exclude the land from forest lieu selection under the act of June 4, 1897. 41–647

18. A pending selection by the Northern Pacific Railway Co. under the act of March 2, 1899, is a "prior valid claim" within the meaning of the excepting clause in the proclamation of November 6, 1906, establishing the Coeur d'Alene forest reserve, now Clearwater National Forest. 42–118

19. Land containing deposits of granite of quality and in quantity sufficient to render it valuable therefor is mineral land and not subject to forest lieu selection under the act of June 4, 1897. 42–144

20. An application to make forest lieu selection of unsurveyed lands which designates the lands as what will be, when surveyed, technical subdivisions of specified sections, attaches to the legal subdivisions so designated upon identification thereof by approval of the plat of survey by the Commissioner of the General Land Office, and precludes the attachment of subsequent adverse settlement rights. 42–93

21. Forest lieu selections of unsurveyed lands are not defeated by settlements made with full knowledge of such prior claims. 43–331

22. A selection of unsurveyed lands under the act of March 2, 1899, prior to the regulations of November 3, 1909, designating the selected tracts as what will be, when surveyed, technical subdivisions of specified sections, accepted by the officers of the Land Department pursuant to then-existing regulations and practice, confers upon the selector a preference right to the lands upon their identification by actual surveys. 43–381

23. The act of June 4, 1897, contemplates that a selection thereunder shall embrace an area approximately equal to the area of the base offered therefor; and where a selection is made of unsurveyed lands, described as what will be when surveyed certain technical legal subdivisions, and upon survey the designated legal subdivisions are found to be irregular and to contain abnormal areas, aggregating more than the area the selector is entitled to upon the base submitted, the selector will not be permitted to furnish additional base to support such excess, but will be required to eliminate from his selection sufficient legal subdivisions to make the selected and base lands approximately equal in area. 42–560

24. Where a forest lieu selection of unsurveyed lands describes the selected lands as what will be when surveyed certain technical subdivisions of specified sections, and upon survey the lands are given the identical technical descriptions under which they were selected, failure of the selector to respond to a notice to "conform" his selection to the official survey, as required by paragraph 5 of the instructions of July 7, 1902, does not warrant rejection or cancellation of the selection. 42–259

25. A forest lieu selection should not be rejected or canceled in its entirety because of objection against part only of the several tracts involved, but should be allowed as to the tracts against which no objection exists. 42–259

26. The fact that part of the land in a forest lieu selection was occupied adversely to the selector at the date of the filing of the selection does not render the entire selection invalid, but as to the land not so occupied the selection is good and superior to any settlement claim subsequently initiated. 45–54

27. An innocent purchaser for value of a forest lieu selection under the act of June 4, 1897, prior to patent, does not by such purchase acquire any indefeasible interest in or legal or equitable title to the land involved, nor any such right as upon relinquishment of said selection by such purchaser and reselection of the land in the name of the Santa Fe Pacific Railroad Co. is mergeable under the act of March 3, 1905, in the face of an adverse proceeding pending against the selection at the date of the relinquishment, into the contract right of selection saved to the railroad company by

said act, or into any right of reselection by the purchaser himself upon other base lands, to the prejudice of the right of a bona fide homestead settler on the selected lands at the time the relinquishment of the original selection and application for reselection were filed. 42–575

28. Neither an applicant to make forest lieu selection nor his transferee before patent can avoid the issue in adverse proceedings against the selection by relinquishing the same after service of notice of such proceedings and acquire against an intervening settler any better right to the selected lands by an attempted reselection thereof than he would have were such selection held to be invalid and canceled on such proceedings. 42–575

29. Public lands which are vacant and unappropriated except for a pending unapproved forest lieu selection embracing the same are not by reason alone of such selection withdrawn from homestead settlement, and a homestead settler in good faith on such lands, otherwise subject to settlement, acquires under the act of May 14, 1880, a right of entry therefor, subject to such selection, which attaches immediately upon relinquishment of the selection and will prevent the substitution by the selector or his transferee of other lands as base for the selection. 42–575

30. Where an application to make forest lieu selection fails because of defective base, amendment thereof by the substitution of new base can not be allowed in the face of an intervening withdrawal for forestry purposes. 43–146

31. The Secretary of the Interior is without power to authorize the cutting of timber from the lands embraced in an unapproved forest lieu selection, even though the selector should execute bond to indemnify the United States in the event the selection should fail. 43–176

32. The fact that part of the land embraced in a forest lieu selection is within a power site or other withdrawal does not necessitate cancellation of the selection in its entirety, but it may be divided and permitted to stand as to the land subject thereto, upon designation by the selector of proper bases for such portion. 43–118

33. Where the application to purchase a tract of land from the State of California, assigned as base for a forest lieu selection, was made, and certificate thereon issued, in the name of a fictitious person, and assignment thereof made in the name of such fictitious person to a person in being, a patent issued to such assignee by the surveyor general of the State is not void but voidable; but one claiming under such patent as a *bona fide* innocent purchaser for value must disclose all the facts surrounding the transaction and make a clear and convincing showing to establish his good faith. 44–495

34. There is no provision of law authorizing forest lieu selection, under the act of June 4, 1897, of lands which have been withdrawn or classified as coal. 45–157

35. Reinstatement of selection or return of selection papers. 46–456

36. As the right to select public land in lieu of lands within a forest reserve under the exchange provisions of the act of June 4, 1897, is not assignable, an application for the return of papers relating to such a selection with the right to select other land, filed by the transferee of the selected land and not by the alleged owner of the base land, can not be granted. 46–479

37. If the United States will thereby obtain a perfect, indefeasible title to the base lands, a selection made under the act of June 4, 1897 (30 Stat. 36), should be approved. 46–341

38. The cancellation of a homestead entry, based upon proceedings initiated more than two years after the issuance of final certificate thereon, is without authority of law, and a forest lieu selection rejected because of such erroneous cancellation of

the base land, remains legally pending and comes within the provisions of the act of March 3, 1905. 47–99

39. The proviso to the act of March 3, 1905, authorizing the making of a new forest lieu selection, provides no specific period within which its benefits may be claimed, and any attempt to limit the right of reselection to a certain time is an abridgment of the selector's rights and without authority of law; but in the absence of an application to select a specific tract of land, the department will not attempt to determine whether the selector, or those for whom he acts, is entitled to make further selection. 47–109

40. A selection under the exchange provisions of the act of June 4, 1897, which was valid when made by reason of the selector having complied with all of the departmental regulations in connection therewith, is not affected by the subsequent inclusion of the selected land in a national forest. 48–132

41. A valid selection under the act of June 4, 1897, of unsurveyed lands, is not defeated by reason of their subsequent survey as a part of a section granted to the State of Washington for the support of public schools. 48–132

42. The selection of land in lieu of a relinquished claim in a forest reserve under the act of June 4, 1897, can be exercised only by or in behalf of the owner of the land relinquished, and any defect of title in the purported owner of the base land is properly subject to objection as against the selector and equally against anyone claiming under the selector, except where title to the selected tract has passed from the Government and is held by a *bona fide* purchaser. 50–504

43. The proviso to the act of March 3, 1905, which provides that if for any reason not the fault of the party making the selection a pending forest lieu selection is held invalid, another selection may be made in lieu thereof, does not authorize a purchaser of the unpatented selected tract, without notice of fraud, to make a new selection, if the base land had been fraudulently acquired and the selection properly rejected. 50–504

44. A selection under the exchange provisions of the act of June 4, 1897, which was valid when made by reason of the selector having complied with all of the departmental regulations in connection therewith, is not affected by the subsequent inclusion of the selected land in a national forest. 48–132

FOREST RESERVES

See NATIONAL FORESTS.

FORFEITURE

See MINING CLAIM, 49–432; 50–262, 291, 577; OIL, GAS, ETC., LANDS, XVI; PRACTICE, 50–363; RECLAMATION, 50–224; REPAYMENT, 50–589.

1. The provisions of the act of March 8, 1918, relieving public-land claimants from the penalty of forfeiture for failure to do any act required by the law under which their claims were made, during the period of their military service, do not accord protection in cases where the failure to comply with law occurred prior to entry into the military service and was established at a hearing at which claimant appeared and was afforded due opportunity to offer defense. 46–488

FORT APACHE LANDS, ARIZONA

See INDIAN LANDS, 49–421; 50–672.

FORT ASSINNIBOINE LANDS, MONTANA

See DESERT LANDS, 45–511; RESERVATION, 48–35; SELECTION, 49–540.

1. Instructions of May 3, 1923, Fort Assinniboine abandoned military reservation; extension of time to make payments; act of January 6, 1921. (Circular No. 899.) 49–599

2. Instructions of February 8, 1924, Fort Assinniboine abandoned military reservation; extension of time for payments; Circular No. 899, amended. (Circular No. 914.) 50–276

3. Instructions of July 22, 1924, Fort Assinniboine abandoned military reservation, Montana; extension of time to make payments, act of June 7, 1924. (Circular No. 954.) 50–586

FORT BELKNAP RESERVATION

1. The provision in the Indian appropriation act of September 21, 1922, which relates to the issuance of patents to religious organizations for lands within Indian reservations generally, did not repeal the proviso to section 3 of the special act of March 3, 1921, as to the form of patent to be issued or the quantity of land granted to such organizations within the Fort Belknap Reservation, Mont. 51–419

FORT BERTHOLD LANDS

See INDIAN LANDS, 44–354, 382, 452, 455, 575; 45–204; 48–448; 49–354; 50–557.

1. Instructions of June 28, 1920, sale of isolated tracts, Fort Berthold Indian Reservation. (Circular No. 706.) 47–416

FORT BUFORD, N. DAK., LANDS

See ISOLATED TRACT, 48–297.

FORT HALL LANDS

See INDIAN LANDS, 48–455.

FORT LARAMIE WOOD RESERVATION

See RESERVATION, 48–321.

FORT PECK LANDS

See INDIAN LANDS, 44–501; 46–75, 118, 380; 48–440; REPAYMENT, 46–282.

1. Instructions of January 23, 1920; payments for Fort Peck lands. (Circular No. 667.) 47–335

2. Instructions of March 4, 1925, extension of time for payments on Fort Peck Indian lands. (Circular No. 986.) 51–76

3. Instructions of July 20, 1926, extension of time for payments on Fort Peck Indian lands. (Circular No. 1081.) 51–498

FORT SABINE MILITARY RESERVATION

See RESERVATION, 48–432.

FOSSILS

See MINERAL LAND, 44–325.

FRAUD

See HOMESTEAD, 48–104, 454; 50–645; REPAYMENT, 46–433; 48–367; 49–344; 50–599, 602; SURVEY, 49–452; 50–679.

1. The element of good faith is the essential foundation of all valid claims under the homestead law, and as the Government is a party in interest it is the duty of the department to see that a claimant thereunder is not permitted by collusion and fraud to do indirectly that which the law forbids. 46–492

GAS LANDS

See OIL, GAS, ETC., LANDS.

GEOLOGICAL SURVEY

See OIL, GAS, ETC., LANDS; POWER SITES.

1. Instructions of March 13, 1926, reports by Geological Survey on railroad and State selections, scrip applications, and nonmineral entries. 51–398

GIG HARBOR MILITARY RESERVATION

See RESERVATION, 48–100.

GRANITE

See MINERAL LANDS, 42–144.

GRANTS FOR EDUCATION

See STATES AND TERRITORIES.

GRAZING

See HOMESTEAD, 42–347.

GROS VENTRE AND OTHER INDIAN LANDS

See INDIAN LANDS, 44–78; 45–17, 193.

GUARDIAN AND GUARDIANSHIP

See INSANITY, 45–191, 467.

HAWAII

1. The act of March 2, 1887, as supplemented by the acts of March 16, 1906, and February 24, 1925, authorizing appropriation of amounts annually for the support of agricultural experiment stations, in connection with the colleges established pursuant to the act of July 2, 1862, permits Territories of the United States to participate in its benefits, where appropriations therefor have been made, but the benefits of that law have never been extended to Hawaii; in lieu thereof, however, separate comparable appropriations have been made for similar expenditures in that Territory and other outlying Territories and possessions. 51–351

HEAD OF A FAMILY

See HOMESTEAD, 41–509.

HEARING

See CONTEST, 48–564; 49–212, 318, 514; 50–273; OIL, GAS, ETC., LANDS, 50–370, 524; PRACTICE, 41–295, 392, 616, 655; 48–615.

1. Section 858, Revised Statutes, which contains, among others, the provision that in any civil action no witness shall be excluded because he is a party to or interested in the issue tried, is applicable to hearings involving public-land matters to the same extent as to actions before the courts. 49–318

2. The office of the subpœna, the provision for the issuance and service of which is made by the act of January 31, 1903, is to secure the attendance of witnesses and compel them to testify at hearings involving public-land matters, but where a party to the proceedings is present at such a hearing, he is under the jurisdiction of the tribunal in charge thereof, and can not properly refuse to testify, if called upon, notwithstanding that he had not been subpœnaed as a witness. 40–318

3. Section 2 of the act of July 17, 1914, accords an agricultural entryman the right to a hearing where the lands within his unrestricted entry were subsequently classified as mineral and his application for reclassification is denied. 51–447

HEIRS

See CONTEST, 45–215, 446; DESCENT AND DISTRIBUTION; HOMESTEAD, IV; INDIAN LANDS, 45–568; INSANITY, 45–2, 4; PATENT, 51–244.

HOLIDAYS

1. Instructions of November 29, 1912, respecting days on which public offices may be closed. 41–491

HOMESTEAD

See ABANDONMENT; APPLICATION, 43–229; 46–278; APPROXIMATION; CITIZENSHIP; CONTEST; ENTRY; FILING FEES; MARRIAGE; MILITARY SERVICE; OIL, GAS, ETC., LANDS; PATENT; PRIVATE CLAIM; RECLAMATION; RELINQUISHMENT; RESIDENCE; SETTLEMENT.

I. Generally

1. Instructions of July 25, 1912, under act of April 30, 1912, concerning homesteads in reclamation projects. 41–115

2. Revised Suggestions to Homesteaders, March 26, 1913. 42–35

3. Revised Suggestions to Homesteaders, January 2, 1914. 43–1

4. Revised Suggestions to Homesteaders of June 1, 1915. 44–91

5. Amended Suggestions to Homesteaders, January 16, 1922. (Circular No. 541.) 48–389

6. Circular of June 6, 1914, under act of April 6, 1914, relating to intermarriage of homesteaders. 43–272

7. Instructions of November 4, 1914, under act of October 17, 1914, concerning marriage of female citizen, a homestead claimant, to an alien. 43–444

8. Order of July 14, 1915, concerning certified copies of homestead entry papers. 44–194

9. Instructions of March 19, 1917, under act of February 20, 1917. (Circular No. 535.) 46–57

10. Instructions of May 19, 1922, homestead exemption, act of April 28, 1922. (Circular No. 826.) 49–114

11. Instructions of May 26, 1922, Cheyenne River and Standing Rock Indian lands; payments. (Circular No. 829.) 49–131

12. Instructions of May 26, 1922, restoration to entry of lands in the south half of the Colville Indian Reservation. 49–134

13. Instructions of June 29, 1922, restoration to entry of reclassified lands in the south half of the Colville Indian Reservation. (Circular No. 836½.) 49–156

14. Instructions of July 28, 1922, extension of time for payments; Crow Indian lands. (Circular No. 840.) 49–194

15. Instructions of July 31, 1922, agricultural entries on coal, oil, and gas lands, Alaska. (Circular No. 842.) 49–196

16. Instructions of April 7, 1923, homestead entries under Kinkaid Act; additional entries. 49–528

17. A purchase of public land under section 5 of the act of May 20, 1908, is not in any sense a homestead entry; it is, however, to be classified as an entry under the agricultural land laws. 51–60

18. A homestead entry is not subject to contest on the ground of abandonment where the entryman is placed under judicial restraint. 51–174

19. An application to contest which does not allege an existing default or disqualification in the entryman does not contain a sufficient charge upon which to predicate a contest. 51–174

20. The homestead right is not exhausted by the making of a homestead entry which is subsequently relinquished because of a prior adverse settlement claim. 42–488

21. The failure of a homestead entryman who made entry prior to the act of June 6, 1912, to elect to make proof under the law under which his entry was made, where notice was mailed to him in accordance with the act, subjects his entry to adjudication under said act, regardless of the reason that influenced him or caused his failure to elect to have his entry adjudicated under the old law. 41–111

22. A homestead entry is a contract which can not be set aside until shown to have been unlawfully, fraudulently, or irregularly made or subsequently violated, even before the entryman's inchoate right thereto ripens into an equitable title. 51–295

23. Departmental decision in Sorli *v.* Berg (40 L. D. 259) overruled, and decision in Amidon *v.* Hegdale (39 L. D. 131) holding that "under the maxim *de minimis non curat lex* the ownership of less than 1 acre in excess of 160 acres will not be held a disqualification to make homestead entry," reaffirmed. 42–557

24. Where a homestead applicant holds lands under color of title by tax deed and claims them as his own, the Land Department will not undertake to probe minutely the title thereto, to determine whether the State law relating to tax sales was in all respects complied with; and in the absence of an affirmative showing to the contrary by the applicant, he will be held the "proprietor" thereof within the meaning of the provision of section 2289

of the Revised Statutes declaring disqualified to make homestead entry one who is the proprietor of more than 160 acres of land. 41–387

25. Where a homestead entry is relinquished in favor of a third party during the pendency of an application to contest, the rights of the contestant with respect to entering the lands must be determined in accordance with the state of the record at the date of the acceptance of the relinquishment. 51–183

26. A homestead entry should not be canceled upon a relinquishment executed by but not filed until after the death of the entryman, yet, where such entry has been canceled, a subsequent entry will not be disturbed for the purpose of reinstating the former entry unless it be shown that, at the date of the entryman's death, he was complying with the law and had not abandoned the land for a valuable consideration. 51–292

27. Upon the filing of evidence of the judicial restraint of a homestead entryman the entry will be held suspended for a period discretionary with the Commissioner of the General Land Office, having regard to the facts and circumstances adduced, and the entryman will be put on notice that at the expiration of the time limit the entry will be declared forfeited if, in the meantime, satisfactory final proof is not submitted or a relinquishment filed. 51–174

28. A deserted wife who submits proof upon a homestead entry in accordance with the provisions of the act of October 22, 1914, is entitled to claim credit, in lieu of residence, for the military or naval service of her husband. 51–189

29. One having a mere life estate in land is not the proprietor thereof within the meaning of the statute declaring disqualified to make homestead entry one who is the proprietor of more than 160 acres of land; a proprietor within the meaning of that statute being an owner in fee simple or one who may acquire the fee simple title by carrying out his own obligations or enforcing a vested right. 43–200

30. A deed is not effective until delivery; and where an intending homestead entryman executes deeds for land owned by him in excess of 160 acres, and makes entry before the deeds are delivered, such entry is invalid because of the disqualification of the entryman by ownership of more than 160 acres of land. 44–52

31. The word "proprietor," as employed in section 2289 of the Revised Statutes as amended by section 5 of the act of March 3, 1891 (26 Stat. 1095), means owner, and an essential to ownership is present possession or enjoyment, or the present right to acquire possession. 46–290

32. One having only a vested estate in remainder in lands is not "proprietor" thereof within the meaning of section 5 of the act of March 3, 1891, and such interest in lands does not disqualify him from making homestead entry. 46–290

33. While a homestead application should not be allowed, after the lapse of a considerable time from the filing thereof, without a showing on the part of the applicant of his then qualifications to enter, yet where entry is allowed without such showing, and the applicant subsequently furnishes proof of his continuing qualifications to the date of the entry, it should be recognized as effective from the date of its allowance. 44–226

34. If a *bona fide* settler possesses the necessary qualifications at the time of initiation of his homestead claim, the subsequent ownership of more than 160 acres of land prior to time of making record entry does not invalidate such settlement claim. 47–406

35. The making of an original homestead entry amounts to no more than a declaration by the claimant of intention to acquire title to the land in the manner prescribed by the statute, and

bears substantially the same relation to the final acquisition of title as does the declaratory statement to purchase under the preemption law—no vested right being acquired by either as against the Government. 42–62

36. One who makes homestead entry of land so heavily timbered that the greater part is not subject to cultivation except at a very great expense for clearing, assumes a burden commensurate with such undertaking to establish his *bona fides* in making the entry for homestead purposes. 42–510

37. Where a homestead entryman was in default at the time of reservation of the lands for forest purposes, he can not thereafter cure the default in the face of the reservation. 43–538

38. The making and perfecting of title to a homestead entry under the act of June 5, 1906, providing for the disposal of ceded Indian lands under the provisions of the homestead laws to the highest bidder under sealed bids, exhausts the homestead right, notwithstanding the entryman was required to pay for the land the amount bid. 43–158

39. In view of the Executive proclamation of May 3, 1912, reserving all public lands lying within 60 feet of the international boundary line between the United States and the Dominion of Canada, an entry of lands along the boundary can only be allowed subject to the reservation, and an application to enter any of such lands should specifically except and exclude therefrom a strip 60 feet in width lying along the boundary line. 43–552

40. While the department does not attempt to attack collaterally the judgment of a court in issuing a decree of divorce, yet it is not precluded from determining whether a claimant is qualified to make homestead entry merely because in another jurisdiction she was given the status of one so qualified, and if it be found that for the purpose of acquiring title to public lands such judgment was procured by fraud and collusion the entry will be canceled. 46–492

41. An original entry of record, although subject to cancellation upon proper proceedings, may nevertheless be basis for an additional entry under section 3 of the enlarged homestead act, and the additional entry may be perfected, even should the original be canceled. 46–164

42. One who makes homestead entry for a tract of land which is in the possession of another claiming from a different source fully disclosed by the records of the parish is constructively notified by such possession and records of the adverse claim; and land so held under color of title is not subject to entry, citing Krueger *v.* United States (246 U. S. 69). 47–17

43. An equitable title in land does not accrue to a homestead claimant until he has done all that the law and the authoritative regulations prescribe, and one submitting final proof, after the creation of a petroleum reserve, upon lands entered under the homestead laws prior to their withdrawal, must, unless he proves that the lands are in fact nonmineral, apply for a restricted patent as provided by the act of July 17, 1914, or suffer cancellation of his entry. 48–18

44. Where the character of land embraced within a homestead entry is placed in issue, that question must be determined as of the time of the submission of final proof, and if the land at that time would be properly regarded, in the absence of any proof whatever, as of known mineral character, the burden of proving it not then known to be mineral rests with the entryman, otherwise the Government must assume the burden of proof. 48–280

45. The character of the land is the test which determines whether or not an entry is "lawful" within the meaning of that term as used in the exception clause of the act of June 25, 1910, which declares that lands included within a lawful homestead or desert-

land entry previously to their withdrawal are not to be affected by a withdrawal made thereunder. 48–280

46. A complete equitable title does not vest in a homestead entryman prior to submission of satisfactory final proof, and where the lands therein are withdrawn and included within a petroleum reserve before the submission of such proof, the patent therefor must contain a reservation to the United States of the oil and gas contents as provided for by the act of July 17, 1914, unless the entryman, upon whom is placed the burden of proof, shows that the lands are in fact nonmineral in character. 48–281

47. The so-called drought act of July 24, 1919, while in the nature of remedial legislation, obviously intended that an entryman, claiming credit for constructive residence thereunder should have the requisite qualifications to make the entry and be able to show satisfactory compliance with the law under which the entry was made up to the commencement of the absence period. 48–297

48. Only entries initiated prior to military or naval service during time of war are protected by the act of July 28, 1917. 49–318

49. One who made a homestead entry for any area of land in the territory affected by the so-called Kinkaid Act after the date of the amendatory act of May 29, 1908, is not qualified to make an original entry under the stock-raising homestead act. 49–286

50. A homestead entry under the act of June 6, 1912, may embrace both lands classified as coal and lands classified as noncoal; but in such case the entry will not be subject to commutation, and patent issued thereon must reserve to the United States the coal deposits in the tracts classified as coal lands. 43–289

51. Where land within a homestead entry upon which final proof has been submitted, but suspended to await the fulfillment of some further requirement, is discovered to be within the limits of a producing oil field prior to the completion of the proof, the entryman must consent to a reservation of the oil and gas content to the United States as prescribed by the act of July 17, 1914, or assume the burden of showing the nonmineral character of the land. 49–324

52. A permit for the prospecting of land covered by an agricultural entry made without a reservation of the oil and gas content to the United States, can not be granted while the entry subsists, without such reservation, even though the applicant be the entryman himself claiming under a preference right. 49–324

53. Because of delay on the part of a settler to make entry of public land, the intervening of a mere application for an oil and gas prospecting permit under section 13 of the act of February 25, 1920, does not, in the absence of notice thereof, deprive the entryman of any of his rights under his entry. 51–38

54. Where a homestead entryman is required to consent to a mineral reservation as a condition precedent to the issuance of a patent, the status of his qualifications with respect to his right to be preferred in the award of a permit to prospect the entered land for oil and gas under section 20 of the act of February 25, 1920, is to be determined as of the date that he files his consent. 49–324

55. The Government has the right to classify entered lands as prospectively valuable for minerals at any time prior to the vesting of an equitable right to a patent for both the surface and the mineral deposits therein, and such a vested right is not acquired until the entryman has done everything required by law toward earning title, including payment of fees and commissions. 49–608

56. Where a restricted patent was issued upon a homestead entry under the act of July 17, 1914, reserving the oil and gas contents in accordance with the departmental practice then obtain-

ing, and the action is long acquiesced in by the patentee, the matter is *res adjudicata*, and a petition to reopen the case will not be entertained, though a different practice than that originally in force prevails. 49–659

57. A surface entry which has been allowed under existing regulations pursuant to section 29 of the leasing act subsequent to the granting of a lease of the coal deposits will not be canceled merely because the lessee needs the surface and the use thereof by the entryman may cause inconvenience in the conduct of the mining operations. 51–295

58. The issuance of a patent for lands entered as agricultural pursuant to the act of July 17, 1914, containing a reservation of mineral other than that on account of which the lands were withdrawn or classified or reported as valuable, is without authority of law and ineffective to reserve deposits of such mineral, if there be any, in the lands patented. 51–477

59. An application for an oil and gas prospecting permit for land embraced within an unrestricted homestead entry is not a nullity, but it may be regarded as a report of mineral value sufficient to inquire as to whether conditions warrant the procurement of mineral waivers pursuant to the act of July 17, 1914. 51–622

60. The right of an agricultural entryman to be preferred in the award of an oil and gas prospecting permit granted by section 20 of the leasing act of February 25, 1920, is not applicable to homestead entries initiated after the passage of that act. 51–622

61. The determination of the question as to which of two conflicting claimants, an agricultural entryman or an oil and gas permittee, has the paramount right to the exclusive use of the surface, is dependent upon priority in the initiation of the claims. 51–622

62. An entryman who initiates a homestead entry under the conditions prescribed by section 20 of the act of February 25, 1920, is entitled to a preference in the award of a permit to prospect for oil and gas on the entered land, if the entry was intact at the time that the permit application was presented, although statutory expiration notice for submission of final proof had issued prior thereto, and the entry was canceled for default before the permit was granted. 51–413

63. Section 20 of the leasing act is, in its nature, a relief measure, designed to recognize the equities of entrymen who made agricultural entries in good faith and prior to the classification of the lands as valuable for oil and gas, and should be liberally construed. 51–413

64. A homestead entryman is entitled to a lease of the oil and gas contents in the land embraced in his entry, where those lands have been classified as within the known structure of a producing oil and gas field, if, except for such classification, he would have been entitled to a preference right to a prospecting permit under section 20 of the leasing act. 51–413

65. Congress intended that the only effect that a classification of land as within the known geologic structure of a producing oil and gas field should have upon the rights of an entryman otherwise entitled to a preference right permit under section 20 of the leasing act, was that, instead of being awarded a permit and subsequently, as a reward for discovery, the reduced royalty authorized by section 14 of the act, he, like all others, should receive only a lease at a higher royalty rate. 51–413

66. Decisions of the United States Supreme Court declaring erroneous established practices of the Land Department in disposing of public lands with reservations of oil and gas will not be given retroactive effect in other cases in which final adjudications have been made and acquiesced in by the parties adversely affected and especially where Congress has recognized

their equities by granting them preference rights to permits or leases. 49–660

67. A homestead entryman does not acquire a complete equitable title in entered lands until he has done everything required by law toward earning title, including payment of lawful fees and commissions, and if, at any time prior thereto the lands are included within a petroleum withdrawal he must, unless he proves that the lands are in fact nonmineral, consent to take a restricted patent as provided by the act of July 17, 1914, or suffer cancellation of his entry. 49–671

68. Where a homestead entry has been included within a petroleum withdrawal prior to the vesting of complete equitable title, the entryman, in order to establish his right to an unrestricted patent, must, if his application for reclassification be denied, assume the burden of proof and show that the lands are in fact nonmineral in character, and the determination of that fact must be made as of the date upon which the entryman performed the last act required of him by law toward earning title. 49–671

69. A published report by the Geological Survey that lands are prospectively valuable for oil or gas is sufficient to warrant their withdrawal for such deposits, and one who afterwards enters them under a nonmineral land law must either consent to take a restricted patent in accordance with the provisions of section 3 of the act of July 17, 1914, or assume the burden of proof and show that the lands are in fact nonmineral in character. 50–288

70. A homestead application based upon a claim of settlement initiated subsequent in time to an oil and gas prospecting permit application, can only be allowed subject to the reservations of the act of July 17, 1914, and upon waiver of damages to the surface improvements as required by section 29 of the act of February 25, 1920, and the permit applicant is not obligated to show cause against the allowance of the homestead application upon those conditions. 50–424

71. An entry for land segregated by the prior issuance of an oil and gas prospecting permit can be allowed only for so much of the surface as is not necessary for the operations of the permittee, and the fact that the geologic structure within which the land is situated is producing is a circumstance properly to be considered, but does not change the situation as to the rights of the parties. 50–525

72. A withdrawal under the act of June 25, 1910, does not stop the running of the two-year period fixed by the proviso to section 7 of the act of March 3, 1891, and a homestead entry within the limits of such a withdrawal is confirmed by that act if the institution of adverse proceedings is not commenced within two years from the date of the issuance of the receiver's receipt upon the final entry. 49–460

73. The receipt issued by the receiver for final commissions and testimony fees upon the submission of final proof by a homestead entryman is the "receiver's receipt upon final entry" within the meaning of that term as used in the proviso to section 7 of the act of March 3, 1891, and the mere suspension of the issuance of a final certificate does not operate to stop the running of the two-year period fixed by that act. 49–461

74. The rule that the period of limitation specified in the proviso to section 7 of the act of March 3, 1891, begins to run from the date of the issuance of the "receiver's receipt upon the final entry," is not met by the payment of the required fees and commissions tendered in connection with the submission of final proof where that officer merely places the moneys in his unearned account without issuing receipt therefor. 49–492

75. Where purchase money tendered by a homestead entryman in connection with his final proof is subsequently returned to him by the receiver, either at the former's request

or with his consent, the entryman is not in a position to demand patent as upon a completed entry. 49–492

76. While the facts may be such as to constitute a claim against the estate of a deceased settler in favor of one of his children who perfected a homestead entry as his heir, yet they can not alter the established rule of law which requires that the final certificate, when issued, must be to the heirs generally. 51–418

77. The act of January 27, 1922, amending section 2372, Revised Statutes, which authorizes the Secretary of the Interior to change, upon voluntary relinquishment, an entry confirmed under the proviso to section 7 of the act of March 3, 1891, but which prior to confirmation had been erroneously disposed of to another, to any tract of unappropriated, nonmineral surveyed public land, confers the privilege upon the one in whom the entry is confirmed; it does not confer a similar privilege upon the defeated claimant. 49–544

78. The act of January 27, 1922, was remedial legislation for the benefit of one, other than the original entryman, who had been permitted to enter land formerly in a confirmed entry, erroneously canceled, but it did not contemplate that the change of entry provision should extend to a claimant who is also the present holder under another form of entry. 51–245

79. The Secretary of the Interior has no authority under any existing law to grant relief generally to persons who have lost lands embraced in entries erroneously allowed or patented to them by reason of the confirmation of the titles thereto in others. 49–544

80. Unsurveyed public lands are not subject to homestead entry, and an application to make entry can not be filed prior to their official survey and opening to entry. 49–549

81. Lands restored to entry upon the annulment of an invalid patent do not become subject to homestead entry generally until the expiration of the preference right privilege accorded by Congress to discharged soldiers, sailors, and marines. 49–549

82. The provision contained in the act of February 25, 1919, reducing, for climatic conditions, the minimum residence of a homestead entryman to five months in each year for a period of five years, is mandatory and does not confer upon the Land Department authority to accept less than the length of residence specified in the act. 49–602

83. It is immaterial whether tracts included in a homestead entry are described in a patent according to the legal subdivision as shown upon the plat of record at the time the entry was made, or as lots according to a plat of a subsequent dependent resurvey made for the purpose of reestablishing the location of the monuments of the original survey, but it is preferable that they be described in accordance with the latter inasmuch as they are the latest designations and bring to attention the correct data. 49–607

84. The conformation of a patent issued for homestead lands to a plat of a dependent resurvey made for the purpose of reestablishing the location of the monuments of the original survey, upon which the acreage is shown to be less than that described upon the plat of record at the time the entry was made, is not a ground for reformation of the patent, inasmuch as the acreage described in a patent is a question of fact and must yield when the boundaries of the tract have been determined by competent survey. 49–607

85. Under the laws of the State of Montana a mortgage is merely a lien upon the property mortgaged, and a mortgagee who purchases at foreclosure sale a homestead covered by his mortgage is not, prior to such purchase, entitled to claim as an assignee within the purview of section 20 of the act of February 25, 1920. 49–610

86. Where a mortgaged homestead entry has been canceled upon default of the entryman after submission of acceptable final proof, a subsequent entryman will be chargeable with notice of what an examination of the county records would have disclosed with respect to the mortgage. 51–519

87. A homestead entryman, after submission of acceptable final proof, can not by wrongful abandonment and forfeiture of his rights acquired thereunder, defeat the rights of an encumbrancer who has in good faith furnished the means with which to improve the entry, but the latter will be allowed to show that equitable title has been earned by compliance with the essential requirements of the law. 51–519

88. Land that has been occupied for many years in good faith under claim of title is not subject to homestead entry by another, and one seeking to make entry thereof is chargeable with notice of what an examination of the county records would have disclosed. 51–584

89. An application to make homestead entry presupposes good faith on the part of the applicant, and where his good faith is questioned and the facts and circumstances justify the conclusion of bad faith, his application will not be entertained. 51–584

90. Laches in establishing residence upon a homestead entry within six months from date of entry may be cured by the establishment of residence prior to knowledge of a contest, and, where upon the death of an entryman those succeeding to the entry show that the entryman was not in default at the date of his death, the fact that there had been a previous default as to maintenance of residence is not ground for cancellation. 49–622

91. The fact that an occupant of public land is not qualified to make a homestead entry is not sufficient to modify the rule that land in the actual possession and occupancy of one under color of title or claim of right is not subject to entry by another. 49–653

92. Service of notice upon a homestead entryman of the commencement of a suit against him in the local courts by an adverse claimant in no wise calls in question before the Land Department the validity of the entry. 50–5

93. An original homestead entry which has become the community property of the entryman and his wife, although the legal title is in the name of the latter, is still owned by the entryman within the intent of section 7 of the enlarged homestead act. 50–563

II. By Whom

94. One who was a minor at the date of the declaration of intention of his father to become a citizen of the United States acquired by virtue of such declaration the status of one who has declared his intention, and is qualified in that respect to make a homestead entry. 43–116

95. Where lands made subject to the drainage laws of the State of Minnesota by the act of May 20, 1908, were sold for taxes under said act, and the purchaser at the tax sale subsequently waives and assigns all rights under such purchase to one duly qualified to make entry under the homestead laws, such transferee is entitled, in the absence of any intervening adverse entry under the act, to make homestead entry of the land, subject to the provisions of said act. 43–425

96. Conviction of crime and sentence to life imprisonment therefor do not take away the statutory qualifications of a settler on public land to make a homestead entry. 48–625

III. Deserted Wife

97. Circular of November 13, 1914, under act of October 22, 1914, concerning proof on a homestead entry by a deserted wife. 43–445

98. Where a married woman, a minor, is deserted by her husband, she does not thereby, so long as the disqualification of minority exists, be-

come qualified, as a deserted wife, to make homestead entry, unless she be the head of a family. 41–510

99. Where a homestead entryman executes and delivers to another a relinquishment of his entry, with a view to deserting and dispossessing his wife, who is domiciled upon the land, the wife, upon the filing of the relinquishment, is entitled to make entry of the land in her own behalf as the deserted wife of the entryman, with credit for residence from the date of her settlement thereon with her husband. 42–507

100. Where a husband fails to provide a habitable house and proper food for his wife, and the place and mode of living provided by him are grossly unfit, and she is forced on that account to leave him, such separation, under the laws of Montana, constitutes desertion on the part of the husband, and the wife is qualified to make a homestead entry as a deserted wife. 43–511

101. Residence is not required upon an entry made under section 6 of the enlarged homestead act of February 19, 1909, and the deserted wife of one who made entry under that section is entitled to submit final proof and obtain patent for such entry in her own name under the act of October 22, 1914, without showing residence upon the land. 44–494

102. The act of October 22, 1914, confers upon a deserted wife, after desertion has continued for more than one year, the right to submit final proof and complete the entry of her husband in lieu of entering the land as a *feme sole*, but it neither deals with the protection of nor does it diminish her rights in the entry in the interim. 48–274

103. A wife is deserted within the meaning of the act of October 22, 1914, if desertion actually exists, irrespective of the fact that she obtained a divorce as the result of proceedings predicated upon other grounds. 48–274

104. The act of October 22, 1914, does not abrogate the departmental ruling enunciated prior thereto that a homestead entryman can not deprive his wife, who is residing upon the land, of the right after her desertion, to make entry in her own behalf as a deserted wife, upon the filing by another of a relinquishment executed by her husband with the view to deserting and dispossessing her, but it permits her to perfect the existing entry instead of making a new entry in her own name. 48–274

IV. Widow; Heirs; Devisee

105. Instructions of November 23, 1922, rights of widows and minor children of widows of deceased soldiers and sailors of the war with Germany and the Mexican border operations. (Circular No. 865.) 49–357

106. Where the widow of a deceased homesteader is remarried to an alien, without having submitted proof upon her deceased husband's entry, she thereby, by reason of loss of citizenship, becomes disqualified to complete such entry, all rights under which thereupon descend to his heirs. 41–598

107. Upon the death of a homestead entryman leaving a widow and a minor child, the right to complete the entry inures to the widow, if qualified, to the exclusion of the child; and where the widow, claiming her statutory right, forfeits the same by failure to reside upon or cultivate the land during the lifetime of the entry, such right does not, while the widow is living, devolve upon the minor child. 42–168

108. The rights of minor children in the soldiers' additional right of their deceased father, under sections 2306 and 2307 of the Revised Statutes, in event of the remarriage of his widow, are determined as of the date of such remarriage; and only such of the children as are minors at that date have any interest in the additional right. 42–191

109. In case of the death of a homestead entryman then in default, his widow or heirs may complete title by cultivation and improvement of the land for the required time where the entry was made prior to the act of June 6, 1912; or where the entryman was not in default at the time of his death, his widow or heirs may in like manner complete title under the provisions of the act of June 6, 1912. 43–196

110. Under the provisions of the act of June 6, 1912, in case an entryman is prevented by sickness from establishing residence within six months from the date of entry, he is entitled, upon making proper application therefor, to further time, not exceeding six months, within which to begin residence; but in event of his death in such case within the year, his failure to apply for such extension will not result in forfeiture of his claim, and his widow or heirs may show, in case of contest, the existence of conditions which might have been made the basis for an application for extension of time under said act. 43–196

111. The right of a widow, heir, or devisee to complete a homestead entry which has devolved upon him or her through the death of the entryman is not affected by the fact that he or she has exhausted his or her homestead right; nor will his or her personal right to make homestead entry be affected by the fact that he or she may have completed or be engaged in completing, as widow, heir, or devisee, an entry, whether original or additional, made by a deceased homesteader, or additional by him or her, as widow, heir or devisee. 44–234

112. A widow, heir, or devisee upon whom has devolved a homestead entry through the death of the entryman has the same right to make additional entry under the enlarged homestead act as the deceased entryman had, provided he or she has continued to reside upon, cultivate, and improve the land embraced in the original entry since the death of the entryman, which additional entry may be completed by residence, cultivation, and improvement upon the land embraced in the original entry. 44–234

113. In cases where the duty of the widow, heir, or devisee to reside upon the land embraced in the entry of the deceased homesteader may conflict with the duty to reside upon the land entered in his or her own right, he or she should be required to elect which claim to reside upon and perfect and which to abandon. 44–234

114. Where the widow of a deceased homestead entryman fails to assert her statutory rights of succession to the entry of her deceased husband, and just prior to the expiration of the lifetime of the entry the heirs, who for nearly four years succeeding the death of the entryman complied with the requirements of the law, in order to save the entry submit final proof thereon, the widow will be considered to have abandoned her rights, and patent should issue to the heirs. 45–100

115. Where the widow of a deceased homestead entryman makes an additional entry under section 3 of the enlarged homestead act as amended by the act of February 11, 1913, it is incumbent upon her to make full compliance with the requirements of the homestead law in the matter of residence, as well as cultivation and improvement, upon either the original or additional entry. 45–104

116. While section 2291, Revised Statutes, as amended by the act of June 6, 1912, relieves the widow or heirs of a deceased homestead entryman from the necessity of maintaining residence upon the land embraced in the entry, it does require that it be shown when final proof is offered that "she or they have a habitable house upon the land." 47–44

117. On the death of a homestead entryman, leaving a widow and heirs, the right to perfect his claim and receive title thereto vests under section 2291, Revised Statutes, in the widow,

free from any claim on behalf of the heirs; and a State statute relating to inheritance which conflicts therewith can not be invoked to defeat that right. 49–169

118. The benefits of the act of June 8, 1880, which provides that a person who becomes insane after initiating a claim under the homestead laws and before he has earned a patent shall be entitled to a patent on proper proof without further residence and cultivation, if he had in good faith complied with the legal requirements up to the time he became insane, inure to an insane widow who succeeds to all of the rights held by her husband at the time of his death. 49–169

119. The fact that the widow of a homestead entryman, who died before he had earned patent, was insane and confined in an asylum at the time that the claim was initiated, and thereafter remained in that condition, does not deprive her of her exclusive right to perfect the claim and receive title thereto, and her guardian has no power to relinquish the entry or in any way divest her of her interest therein. 49–169

120. Where a homestead entryman dies without having established residence upon his entry, the entry thereupon terminates, and his heirs succeed to no rights whatever in the land. 42–62

121. The second proviso of section 2291, Revised Statutes, as amended by the act of June 6, 1912, does not change the law as it had theretofore existed, except to specifically relieve those succeeding to an entry, upon death of the entryman, from the requirement of residence upon the land. 42–62

122. The homestead law contemplates that its benefits shall be confined to actual settlers and their statutory successors; and where an entryman dies without having established residence, the entry thereupon terminates and his heirs succeed to no rights under the entry. 42–64

123. Where a homestead entryman dies without having established residence, and his heirs thereafter cultivate the land, they do not thereby acquire any legal or equitable right which would warrant the Land Department in issuing patent to them for the land. 42–64

124. The heirs of a deceased entryman under the enlarged homestead act, whose death occurs more than 12 months from the date of entry, without his having established residence, the default not being due to military or naval service, succeed to no right whatever in the land, and the question of military or naval service of the heirs of such entryman is immaterial in a contest proceeding, charging failure to establish residence and abandonment. 48–119

125. Upon the death of a homestead entryman prior to the completion of his entry, his heirs are entitled to make additional entry of contiguous land under section 2 of the act of April 28, 1904, provided they reside upon the original entry. 43–388

126. Section 2291, Revised Statutes, contemplates that, as between the devisee and the heirs of a homestead entryman, the devisee shall succeed to the entryman's right to perfect the entry. 43–242

127. A declaratory statement filed by a soldier or sailor under section 2309 of the Revised Statutes, or by the widow or minor orphan children of a deceased soldier or sailor, can be carried to entry only by the beneficiary named in the statute; and upon the death of the declarant the right to make entry under the declaratory statement does not pass to his heirs or devisee. 43–532

128. Upon the death intestate of a homestead entrywoman, who made entry as a widow, leaving surviving a husband and children, the husband does not have the sole right of succession to the entry, but where under the statutes of the State the husband is an heir of his wife, the right of succession is to the heirs generally. 45–215

129. A life convict who is declared civilly dead by State statute, is not dead within the purview of section 2291, Revised Statutes, which gives the right of entry to a settler's widow, or if she be dead, to his heirs. "if he be dead." 48–625

130. While the facts may be such as to constitute a claim against the estate of a deceased settler in favor of one of his children who perfected a homestead entry as his heir, yet they can not alter the established rule of law which requires that the final certificate, when issued, must be to the heirs generally. 51–418

V. Intermarriage of Homesteaders

131. Instructions of April 8, 1919, relative to intermarriage of homesteaders. (Circular 330.) 47–116

132. Instructions of May 2, 1921, relative to intermarriage of homesteaders; acts of April 6, 1914, and March 1, 1921. (Circular No. 753.) 48–106

133. The marriage of a homestead entrywoman to one who has an existing additional homestead entry wherein, because of completed title to the original, no further residence is required, is not within the contemplation of the act of April 6, 1914, which accorded the right of election as to residence where necessary in order to perfect each of the respective entries. 47–282

134. The provision of section 7 of the act of July 3, 1916, authorizing the allowance of an incontiguous additional homestead entry with credit for residence maintained upon the original entry when the distance between the two does not exceed 20 miles, does not permit of an additional entry by a married woman while residing upon the land embraced in her husband's entry; nor is such an entry authorized under the act of April 6, 1914, relating to the rights of homesteaders who intermarry. 47–197

135. Credit for military service can not be allowed in fulfillment of the one-year period of residence required by the act of April 6, 1914, which provides that upon the intermarriage of a homestead entryman and a homestead entrywoman, "after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage," they may carry both entries to completion in the manner provided by that act. 44–243

136. The period of one year specified in the act of April 6, 1914, providing that the marriage of a homestead entryman and a homestead entrywoman, after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage, shall not impair the right of either to a patent, begins to run from the date of the entry, where residence was established within six months and the requirements of the homestead law thereafter complied with, and not from the date of the establishment of residence. 44–577

137. While election under the act of April 6, 1914, designating which entry the husband and wife elect to reside upon in case of intermarriage of a homestead entryman and a homestead entrywoman, should be filed prior to discontinuance of residence upon either tract or within a reasonable time thereafter, yet failure to so file such election is not of itself sufficient ground for contest where the right in fact exists. 45–108

138. The election requirement contained in the act of April 6, 1914, as modified by the act of March 1, 1921, to the effect that both parties must have complied with the homestead law for one year next preceding marriage, is satisfied with respect to the husband, if he had, for a period of one year prior to marriage, resided upon land covered by his application to make a stock-raising homestead entry which was subsequently allowed, notwithstanding the fact that credit can not be given for such residence in the submission of final proof. 48–141

139. The amendatory act of March 1, 1921, which extended the provisions of the act of April 6, 1914, to permit homesteaders who intermarry to perfect under certain conditions settlement claims as well as entries of record at the time of marriage, is to be construed in connection with the adjudication of pending claims of homesteaders who intermarried prior to the enactment of the amendment as though it were incorporated in the original act. 48–328

VI. Commutation

140. Instructions of August 27, 1913, relative to commutation proof under three-year homestead law (Act of June 6, 1912). 42–338

141. Circular of May 27, 1914, concerning commutation proof. 43–256

142. Commutation proof upon homestead entries, showing less than 14 months' residence, should not be received, except in cases where statutory authority exists to the contrary. 41–505

143. Additional homesteads under the act of April 28, 1904, are not subject to commutation. 41–391

144. The provision in the act of June 6, 1912, that persons commuting a homestead entry must at the time be citizens of the United States, has no application to entries made prior to that act and commuted under the original homestead law, it being sufficient if the proof in such cases shows that the entryman has declared his intention to become a citizen. 42–324

145. Where commutation proof is rejected for insufficient showing of residence and cultivation, and the entry held intact subject to future compliance with law, and the entryman thereupon relinquishes the entry and applies for repayment, repayment may be allowed under the act of March 26, 1908, in the absence of fraud or attempted fraud in connection with the rejected proof. 43–93

146. Directions given that departmental decision in Ernest Weisenborn (42 L. D. 533), holding that where commutation proof upon a homestead entry was rejected solely for the reason that notice thereof by publication was defective, repayment of the purchase money paid in connection therewith should not be denied on the ground that the defect might have been cured and the entry confirmed, be no longer followed. 43–395

147. Commutation of a homestead entry included within a forest reservation can not be allowed unless it be shown that at the date of the reservation the homestead law was being complied with by the entryman. 43–538

148. Commutation of a homestead entry of lands within an abandoned military reservation, made under the act of August 23, 1894, can be allowed only upon full payment of the appraised value of the land. 44–485

149. Where, at the time a successful contestant makes entry in exercise of the preference right, the land is subject to entry only under the act of June 22, 1910, he is bound by the provisions of that act; and as said act does not authorize commutation of homestead entries made thereunder, commutation of such entry can not be allowed. 41–72

150. A homestead entry under the act of June 6, 1912, may embrace both lands classified as coal and lands classified as noncoal; but in such case the entry will not be subject to commutation, and patent issued thereon must reserve to the United States the coal deposits in the tracts classified as coal lands. 43–289

151. Commutation of a homestead entry included within a forest reservation can not be allowed unless it be shown that at the date of the reservation the homestead law was being complied with by the entryman. 43–53

VII. Cultivation

152. The provisions of the three-year homestead law respecting cultivation

do not apply to entries made subject to the reclamation act. 43–436

153. Summer fallowing can not be accepted as the equivalent of cultivation under the homestead laws. 41–531

154. The planting and care of fruit trees, in the development of a fruit farm, is cultivation to agricultural crops within the contemplation and purview of both the general homestead law and the three-year homestead act of June 6, 1912. 42–535

155. The homestead law contemplates a continuous compliance both as to residence and cultivation, beginning with the date of entry. 41–119

156. Upon the death of an entryman those upon whom the statute casts the right to perfect title under the entry are merely required to continue cultivation and improvement of the land, so that failure to cultivate in any given year subjects the entry to contest and possible cancellation. 41–119

157. In this case the entryman died seven months after entry without residence upon or cultivation of the land entered. After more than a year had elapsed following the death of the entryman the widow caused 10 acres to be cleared and harrowed. On contest, it is held that this showing does not meet the requirements of the homestead law and cancellation is ordered. 41–119

158. An entryman in making proof of residence under the enlarged homestead act of February 19, 1909, is entitled, under section 2305 of the Revised Statutes, to credit for military service; but the provisions of said section can not be extended to relieve him from the specific requirements of the enlarged homestead act respecting cultivation. 41–366

159. An entrywoman under section 6 of the act of June 17, 1910, is not required to personally perform the physical labor of preparing the soil and cultivating and harvesting the crops, but it will be deemed a compliance with the requirements of the law if such work be done under her personal supervision. 45–449

160. Credit for military service can not be allowed, under section 2305, Revised Statutes, to reduce the required period of cultivation upon an enlarged homestead entry under section 6 of the act of June 17, 1910. [See modification, pp. 451 and 452, in 45 L. D.] 45–449

161. Respecting the cultivation necessary to be shown upon homestead entries made prior to the act of June 6, 1912, where, through failure to elect, the entries must be adjudicated under said act, in all cases where upon considering the whole record the good faith of the entryman appears, the proof will be acceptable if it shows cultivation of at least one-sixteenth of the area of the entry for one year and at least one-eighth for the next year and each suceeding year until final proof, without regard to the particular year of the homestead period in which the cultivation of the one-sixteenth was performed. 41–111

162. The provision in paragraph 18 of the instructions of July 15, 1912, under the three-year homestead act of June 6, 1912, that where good faith appears proof may be accepted if it shows cultivation of at least one-sixteenth in one year and at least one-eighth in the next and each succeeding year until final proof without regard to the particular year of the homestead period in which the cultivation of the one-sixteenth was performed, is applicable to entries made under sections 1 to 5 of the enlarged homestead act of February 19, 1909, as well as to homestead entries under sections 2289 to 2291 of the Revised Statutes. 41–531

163. One who makes an additional entry under section 2 of the act of April 28, 1904, based upon a commuted original entry, is not entitled to a patent upon the strength of the latter entry, unless he had resided upon and cultivated the original entry for the

full period prescribed by law precedent to patent, had it not been commuted; and where such requirement has not been met, he must continue to comply with the residence and cultivation requirement of the law for such period as added to that of the original entry will make the full period of residence and cultivation required by the law under which the patented entry was made. 48–564

164. The residence provisions of the three-year homestead law can not be invoked by one who made an additional entry under the act of April 28, 1904, based upon a commuted original homestead entry made under the preexisting homestead law, but upon which residence had been maintained for more than three years prior to the submission of commutation proof, unless all of the requirements of the three-year homestead law precedent to the issuance of patent had been fulfilled. 48–564

165. Where, at the time of entry under the enlarged homestead act, the land was subject to entry under both that act and the stock-raising homestead act, and was suitable only for grazing, the entryman is not entitled to equitable consideration in support of an application for reduction of the required area of cultivation. 50–549

166. Instructions regarding applications for reduction of area of cultivation on homesteads in national forests. (Circular No. 530.) 46–43

VIII. Act of June 6, 1912 (Three-year Act)

167. Circulars of June 10 and 29, 1912, concerning election under the three-year act. 41–84, 99

168. Circulars of July 15, 1912, and February 13, 1913, under the act of June 6, 1912. 41–103, 479

169. Instructions of October 1, 1912, under act of August 24, 1912, respecting election under the three-year act. 41–325

170. Circular of November 1, 1913, under the three-year homestead law. 42–511

171. Instructions of September 6, 1913, concerning reduction of cultivation under three-year homestead act. 42–343

172. Instructions of August 27, 1913, concerning proof of citizenship in commutation proof under act of June 6, 1912. 42–338

173. Instructions of April 3, 1913, under act of March 4, 1913, respecting rights of settlers on unsurveyed lands under act of June 6, 1912. 42–73

174. Departmental instructions of December 18, 1912, recalled and vacated, and paragraph 19 of instructions of February 13, 1913, modified. 42–579

175. The three-year homestead act of June 6, 1912, is applicable to homestead entries in the District of Alaska. 41–353

176. Election to make proof under three-year law or prior law. Circular of June 10, 1912. 41–81

177. Proof upon homestead entries made prior to the act of June 6, 1912, submitted under that act within seven years from the date of the entry and within five years from the date of the act, may be accepted, if otherwise satisfactory, without submission to the Board of Equitable Adjudication. 42–579

178. In instances where notice was published for five-year proof upon a homestead entry and the proof submitted is found to be acceptable as three-year proof under the act of June 6, 1912, but not good as five-year proof, or where notice was for three-year proof but the proof is found to be acceptable only as five-year proof, action may be taken thereon accordingly, where that is the sole defect, without submission of the case to the Board of Equitable Adjudication. 42–579

179. The provision in the act of June 6, 1912, that persons commuting a homestead entry must at the time be citizens of the United States, has no application to entries made prior to that act and commuted under the original homestead law, it being sufficient if the proof in such cases

shows that the entryman has declared his intention to become a citizen. 42–324

180. The provisions of the three-year homestead law respecting cultivation do not apply to entries made subject to the reclamation act. 43–436

181. A homestead entryman is entitled under the act of June 6, 1912, to the whole of the second year of the entry within which to meet the requirement of that act that one-sixteenth of the area of the entry be cultivated during that year; and a contest for failure to cultivate will not lie until the expiration of the second year. 43–379

182. A homestead entry under the act of June 6, 1912, may embrace both lands classified as coal and lands classified as noncoal; but in such case the entry will not be subject to commutation, and patent issued thereon must reserve to the United States the coal deposits in the tracts classified as coal lands. 43–289

183. In view of the provisions of the acts of June 6, 1912, and August 24, 1912, proof submitted upon a homestead entry made prior to the act of June 6, 1912, may be considered under either the act of June 6, 1912, or the law as it existed prior thereto, whichever may be found applicable to the facts shown. 43–196

184. The mere fact that the land embraced in a homestead entry is covered with timber and brush, which must be removed before it can be cultivated, is not sufficient reason to warrant reduction of the area required to be cultivated by section 2291, Revised Statutes, as amended by the act of June 6, 1912. 42–80

185. Where final proof submitted under the act of June 6, 1912, upon a homestead entry made prior to that act, is rejected because of insufficient showing as to cultivation, ex parte affidavits as to subsequent cultivation will not be accepted; but in such case new final proof should be submitted. 42–315

186. The requirement in the act of June 6, 1912, that entryman shall actually reside upon his claim for seven months each year, does not preclude temporary absences during that period such as are ordinarily necessary and incident to the conduct of a farm. 42–615

187. Proof submitted under the three-year homestead law must show actual residence upon the land entered for at least seven months each year for three years, and the Land Department is without power to extend the privilege of constructive residence for absences during the seven months' periods. 44–134

188. The requirement that the entryman shall actually reside upon his claim for seven months each year does not preclude short absences for the purpose of going to market or other short absences such as are ordinarily necessary and incident to the conduct of a farm. 44–134

189. An entryman who is upon his homestead one or two days each week for a period of seven months each year can not be held to actually reside thereon within the meaning of the three-year act, no matter what may be the cause of his absences. 44–134

190. Prior to the act of June 6, 1912, the homestead law prescribed no exact amount of residence, cultivation, or improvements as a condition to making final proof, merely requiring the entryman to show, within two years after the expiration of five years from the date of his entry, that he has "resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit." 44–134

191. Where proof submitted under the three-year act is rejected for insufficient showing as to residence, the entry, if made prior to the date of that act, should be held intact, subject to the submission of further proof, after the expiration of five years from the date of the entry, under the laws,

rules, and regulations in force at the time the entry was made. 44–134

192. The act of June 6, 1912, contemplates and requires the maintenance by an entryman of actual residence upon the land entered for at least seven months each year for three years; and this statutory requirement precludes the Land Department from extending the privilege of constructive residence during such periods on account of absence due to election to office or for any other reason. 42–615

193. The act of June 6, 1912, permits absences for a continuous period not exceeding five months in each year, which absences are credited to the entryman as constructive residence; and where the proof submitted by an entryman shows that he was absent more than five months in any one year, the Land Department is precluded from accepting such proof as sufficient, notwithstanding the aggregate of time actually spent on the premises for the three years is more than the total required by the act during that period. 42–615

194. The requirement of the act of June 6, 1912, that the entryman maintained actual residence upon the land entered for at least seven months each year for three years, precludes the Land Department from giving the entryman credit, as part of such seven months' period, for constructive residence during the period elapsing between the date of entry and the establishment of residence. 43–231

195. Proof submitted under the three-year homestead law must show actual residence upon the land entered for at least seven months each year for three years, and the Land Department is without power to extend the privilege of constructive residence for absences during the seven months' periods. 43–559

196. The requirement that the entryman shall actually reside upon his claim for seven months each year does not, however, preclude short absences for the purpose of going to market or other brief absences such as are ordinarily necessary and incident to the conduct of a farm. 43–559

197. In case of unavoidable casualties, rendering absences necessary during the seven months' periods, leaves of absence may be applied for and granted under the general provisions of the act of March 2, 1889. 43–559

198. The provision in the act of June 6, 1912, requiring homestead entrymen to cultivate not less than one-sixteenth of the area of their entries beginning with the second year of the entry, contemplates that the two-year period mentioned shall date from the time the entry is made and not from the time residence is established. 44–152

199. An entryman submitting final proof under the act of June 6, 1912, is entitled, by virtue of the act of May 14, 1880, to claim credit for residence from the date of his settlement upon the land. 44–226

200. Under the act of June 6, 1912, a homestead entryman is entitled to an absence of five months in each year, and this period should be deducted from any absence on the part of the entryman under a leave of absence in determining whether he has met the requirements of the law in the matter of residence. 44–220

201. The residence provisions of the three-year homestead law can not be invoked by one who made an additional entry under the act of April 28, 1904, based upon a commuted original homestead entry made under the pre-existing homestead law, but upon which residence had been maintained for more than three years prior to the submission of commutation proof, unless all of the requirements of the three-year homestead law precedent to the issuance of patent had been fulfilled. 48–564

202. The provisions of the three-year homestead act of June 6, 1912, respecting cultivation, have no application to entries made under the reclamation act; but the reclamation laws

require, as a prerequisite to the issuance of final certificate and patent, that the entryman shall have reclaimed, for agricultural purposes, at least one-half of the total irrigable area of his entry and paid all reclamation charges at that time due. 42–534

IX. Adjoining Farm

203. The making of an adjoining farm entry for an amount of land which, added to the original farm aggregates 160 acres, exhausts the homestead right; and such an entry can not be made the basis for a soldiers' additional entry of other lands. 41–129

204. Section 2306 of the Revised Statutes contemplates that a soldier within its provisions shall acquire under the homestead laws the full measure intended to be granted thereby, and where he made a homestead entry for less than 160 acres of public land he is entitled to an additional right of entry, regardless of the particular form, class, or character of the original entry. It follows that an adjoining farm entry is a proper basis for a soldiers' additional entry of an amount of land which, added to the area of public land embraced in the adjoining farm entry, will not exceed 160 acres. 42–313

205. Section 2289, Revised Statutes, does not limit the area of the original farm that may serve as the basis for an adjoining farm entry under that section, except to provide that the original and adjoining farms shall not together exceed 160 acres; so that any farm holding, no matter how small the area, may be made the basis for an adjoining farm entry. 43–137

X. Additional

206. Regulations of August 4, 1917 (Circular No. 560), regarding application for additional homestead entry by widow, heir, or devisee of homesteader. 46–255

207. Instructions of July 30, 1921, regarding payment for excess acreage in additional entries caused by excess in the original entries. 48–163

208. Additional homesteads under the act of April 28, 1904, are not subject to commutation. 41–391

209. One who made homestead entry for less than 160 acres can not, by making additional entry and invoking the rule of approximation, be permitted to secure a greater area of land in the aggregate than he might have embraced in his original entry. 41–391

210. The right of the widow, heir, or devisee of a homestead entryman to complete the entry initiated by him is statutory, and does not include the right to make an additional homestead entry based on the original entry. 46–110

211. An original entry of record, although subject to cancellation upon proper proceedings, may nevertheless be basis for an additional entry under section 3 of the enlarged homestead act, and the additional entry may be perfected, even should the original be canceled. 46–164

212. The term "one quarter section," as used in sections 2289 and 2298, Revised Statutes, means a subdivision of 160 acres, and where an original entry contains more than that amount, for the excess of which payment is made, such excess is to be disregarded in applying the rule of approximation and in computing the area that the entryman may embrace in an additional entry under either the enlarged or the stock-raising homestead act. 48–163

213. The right to make an additional homestead entry under section 2 of the act of June 5, 1900, or under the act of February 20, 1917, or to make a second homestead entry under section 2 of the act of May 22, 1902, is subject to the qualification that the applicant must show that he is not the proprietor of more than 160 acres of land in the United States, acquired under other than the homestead laws. 49–308

214. The act of July 28, 1917, did not make an exception to the general rule previously enunciated by the department to the effect that the right to make an additional homestead entry, until exercised, is intangible, and nothing contained in the act authorizes a construction that the widow, heir, or devisee of a deceased soldier entryman acquires a right by reason of the original entry to make an additional entry of a tract of land for which the soldier had not initiated any claim. 49–321

215. Under the act of February 20, 1917, which provides that one qualified to make an additional entry under the preexisting laws may double the quantity in entering land of the character subject to entry under the enlarged homestead act, one is not precluded from making an additional entry of a tract of land because one-half of its area together with the area previously entered exceeds 160 acres, if the excess is but slight; the rule of approximation is not applicable to such case. 49–647

216. The fact that one had made an additional entry under section 3 of the enlarged homestead act will not preclude him from making a further additional entry under that section regardless of the manner in which the prior entries were perfected, if the combined areas of the original and additional entries do not exceed 320 acres. 51–581

217. If a tract of unsurveyed land, incontiguous to the original entry, has not been designated under the stock-raising homestead act, one seeking to make an additional entry thereof under that act can not initiate a claim thereto without establishing residence thereon. 51–61

218. Where one who made an additional entry under the stock-raising homestead act, being otherwise qualified, was unable to secure the maximum area permitted by reason of the nonavailability of other lands, he may, if lands afterwards become available, enlarge his additional entry by amendment so as to make up the full amount to which he was originally entitled, notwithstanding that at the time of amendment he did not own or reside upon the original entry, inasmuch as the amendment when allowed relates back to the date of the additional entry. 51–82

219. One who possessed the requisite qualifications at the time he made an original homestead entry is not disqualified from making an additional entry under the enlarged or stock-raising homestead acts because of the ownership of land acquired after making the original entry. 51–266

220. One who owned and resided upon his original entry when he applied to make an additional entry under the stock-raising homestead act was qualified to make entry under section 5 of that act, and the fact that he transferred his original entry prior to the allowance of the additional does not change the character of the entry to one under the proviso to section 3 of the act. 51–609

221. Whether an additional entry under the stock-raising homestead act is governed by section 5 or by the provisos to section 3 thereof is dependent upon the nature of the showing to be made in the final proof, and is a question solely for determination between the Government and the entryman. 51–609

222. An application to make an additional stock-raising homestead entry by one who was not residing upon the original entry at the time the application was filed may, nevertheless, be allowed under section 5 of the stock-raising homestead act if he thereafter resumed residence thereon prior to its transfer. 51–610

(a) **Act of March 2, 1889**

223. The right of additional entry accorded by section 6 of the act of March 2, 1889, is for such an amount of land as "added to the quantity previously so entered by him shall not

exceed 160 acres"; and one who made an original homestead entry for 20 acres is not entitled, by invoking the rule of approximation, to make an additional entry under said section for 160 acres, and so acquire in the aggregate 180 acres. 41–386

224. Where an additional homestead entry under section 6 of the act of March 2, 1889, fails of consummation for good and sufficient reason, not the fault of the entryman, such futile effort to obtain the benefits of said section will not be held to exhaust the entryman's right of additional entry thereunder. 43–367

225. Only one exercise of the right to make an additional entry is authorized by section 6 of the act of March 2, 1889, notwithstanding that the entryman does not secure by such entry sufficient land to complete the maximum quantity of 160 acres. 48–144

226. Both section 2289, Revised Statutes, and section 6 of the act of March 2, 1889, require that additional entries made pursuant thereto shall be by legal subdivisions and, inasmuch as the smallest subdivision recognized by the public land laws having reference to homestead entries is 40 acres, it follows that one who is not qualified to make an additional entry of a 40-acre subdivision under those laws, is not qualified to make an original entry under the stock-raising homestead act. 51–233

(*b*) Act of April 28, 1904

227. Circular of October 2, 1912, concerning additional homestead entries under section 2 of the act of April 28, 1904. 41–292

228. Additional homesteads under the act of April 28, 1904, are not subject to commutation. 41–391

229. It is not essential that an applicant to make additional homestead entry under section 2 of the act of April 28, 1904, based upon a former entry to which title has been earned, shall be an actual resident upon the land embraced in the original entry; it being sufficient under the act if he "own" and "occupy" the land—the term "occupy" as so used being construed to require only such occupancy as shows actual and exclusive possession and proprietorship of the premises. 42–56

230. Upon the death of a homestead entryman prior to completion of his entry, his heirs are entitled to make additional entry of contiguous land under section 2 of the act of April 28, 1904, provided they reside upon the original entry. 43–388

231. The right of additional homestead entry accorded by section 2 of the act of April 28, 1904, is limited to entrymen who own and occupy the land covered by their original entries; and the wife of an entryman, even though she be in fact the head of the family, is not entitled to make an entry under that act as additional to an entry made, owned and occupied by her husband, nor would she, after her husband's death, be entitled to make such entry, where the land embraced in the original entry passed to her, as widow, and to the minor children of the entryman. 43–213

232. The qualifications to make additional homestead entry under the act of April 28, 1904, must exist at the date of entry; and entry under that act can not be allowed where the applicant is not at that time the owner of the land embraced in his original entry, as required by the act, notwithstanding he owned and occupied it at the date of the filing of his application. 45–219

233. One who makes an additional entry under section 2 of the act of April 28, 1904, based upon a commuted original entry, is not entitled to a patent upon the strength of the latter entry, unless he had resided upon and cultivated the original entry for the full period prescribed by law precedent to patent, had it not been commuted; and where such requirement has not been met, he must continue to comply with the residence

and cultivation requirement of the law for such period as added to that of the original entry will make the full period of residence and cultivation required by the law under which the patented entry was made. 48–564

234. An entryman who, under the act of April 28, 1904, makes an entry as additional to a patented original entry, does not forfeit his right to perfect the former by the subsequent alienation of the latter, if he was at the time qualified to make the additional entry. 48–564

235. An adjoining farm entry for less than 160 acres is a proper basis for an additional entry under section 2 of the act of April 28, 1904, for an amount of land which added to the area of land embraced in the adjoining farm entry will not exceed 160 acres. 50–614

(c) Act of March 3, 1915

236. Additional entry under the act of March 3, 1915, may be made only where the land in the original entry, as well as that in the additional application, has been designated as subject to entry under the enlarged homestead act; and where part of the original entry is susceptible of irrigation at a reasonable cost, and the land embraced therein is therefore not susceptible of designation, there is no basis for additional entry under the act of March 3, 1915. 45–202

237. It is not necessary that one who has submitted final proof and received patent on his original entry shall have remained in continuous ownership of the land in order to entitle him to an additional entry under section 3 of the enlarged homestead act as amended March 3, 1915, provided he owns and occupies the same at the time of making application for the additional entry. 45–325

238. It is not essential to allowance of an additional entry under the enlarged homestead act of February 19, 1909, as amended by the act of March 3, 1915, that the applicant shall have retained in its entirety his original homestead. 46–28

XI. Soldiers' and Sailors' Homesteads

239. Circular of February 28, 1914, relating to soldiers' and sailors' homestead rights. 43–138

240. Military service during operations in Mexico or along the border thereof. See Circular No. 506 of September 27, 1916. 45–488

241. Instructions of September 10, 1919, relative to time for return to homesteads by discharged soldiers and sailors. (Circular No. 656.) 47–257

242. Instructions of October 8, 1919; absence during course of vocational rehabilitation; act of September 29, 1919. (Circular No. 657.) 47–283

243. Regulations of March 31, 1920; disposition under Public Resolution No. 29, of February 14, 1920, of applications filed by discharged soldiers, etc. (Circular No. 678.) 47–346

244. Instructions of April 2, 1921; proofs on homesteads by incapacitated soldiers, etc., act of March 4, 1921. 48–54

245. Instructions of April 16, 1921; termination of the war with Germany, under Public Resolution No. 64 (41 Stat. 1359). (Circular No. 750.) 48–78

246. Instructions of May 26, 1922, relating to soldiers' and sailors' homestead rights. (Circular No. 302, revised.) 49–118

247. An entryman in making proof of residence under the enlarged homestead act of February 19, 1909, is entitled, under section 2305 of the Revised Statutes, to credit for military service; but the provisions of said section can not be extended to relieve him from the specific requirements of the enlarged homestead act respecting cultivation. 41–366

248. A private soldier or officer who served in the Regular Army for 90 days during the Spanish War or the suppression of the insurrection in the Philippines will be held to have been honorably discharged from such serv-

ice, within the meaning of sections 2304 and 2305, Revised Statutes, when such war or insurrection ended. 42–458

249. Credit for military service can not be allowed in fulfillment of the one-year period of residence required by the act of April 6, 1914, which provides that upon the intermarriage of a homestead entryman and a homestead entrywoman, "after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage," they may carry both entries to completion in the manner provided by that act. 44–243

250. The Land Department has no authority to extend the statutory period of six months from the filing of a soldiers' declaratory statement within which to make entry and settlement. 45–163

251. By failing to make entry and settlement within six months from the filing of a soldiers' declaratory statement the declarant loses all rights thereunder and exhausts the right to file declaratory statement; but where such failure is due to sickness or climatic conditions, the declarant may be permitted to make homestead entry of the land after the expiration of that period, in the absence of any intervening adverse claim. 45–163

252. Credit for military service may be allowed, under section 2305, Revised Statutes, on entries under section 6 of the enlarged homestead acts of February 19, 1909, and June 17, 1910, upon compliance with the provision of said section requiring residence, cultivation, and improvement for the period of at least one year. 45–324

253. While the privilege accorded soldiers and sailors by section 2309, Revised Statutes, authorizing the initiating of a homestead claim by agent, originally had reference to the ordinary homestead entry under section 2289, yet as the varied subsequent legislation, enlarging or restricting the area of land that may be entered, is amendatory of the latter section, that privilege is thus extended to entries initiated under the later acts. 47–80

254. The act of March 8, 1918, relieving public-land claimants from penalty of forfeiture for failure to perform any material acts required by the law under which the claims were asserted during the period of their military service, is sufficiently broad to include a preference right of entry resulting from a contest initiated prior to entering the service; and such right is not forfeited or prejudiced by reason of a successful contestant's failure to exercise it within the statutory period occurring during said military service. 47–301

255. The provision of section 2309, Revised Statutes, relating to the filing of soldiers' and sailors' homestead declaratory statements by agent was not extended by Congress to include survivors who served in the war with Germany, and consequently is inapplicable to them. 50–2

XII. Soldiers' Additional

(a) Generally

256. Circular of July 31, 1912, and amendment of November 20, 1912, relating to location of soldiers' additional rights in Alaska. 41–116, 356

257. Instructions of July 7, 1913, concerning reserved areas between soldiers' additional locations along navigable waters in Alaska. 42–213

258. Regulations, February 16, 1917, following administrative ruling of February 15, 1917. (Circular No. 528.) 46–32

259. Letter to Francis J. Heney as to administrative ruling of February 15, 1917. 46–274

260. Instructions of June 24, 1919, abolishing approximation as applied to soldiers' additional homestead entries. (Circular No. 648.) 47–205

261. Instructions of August 22, 1919, changing date for abolishing approximation of soldiers' additional entries. (Circular No. 655.) 47–206

262. Instructions of August 9, 1918, regarding action to be taken upon applications for soldiers' additional homestead. (Circular No. 616.) 46–516

263. Instructions of September 8, 1923, governing soldiers' additional homestead entries in Alaska. (Circular No. 491.) 50–37

264. The Land Department will not return papers filed in support of a claim of soldiers' additional right under section 2306, Revised Statutes, where the claim is found to be invalid. 41–506

265. The making of an adjoining farm entry for an amount of land which added to the original farm aggregates 160 acres exhausts the homestead right; and such an entry can not be made the basis for a soldiers' additional entry of other lands. 41–129

266. One who prior to the date of the adoption of the Revised Statutes had made homestead entry for less than 160 acres, which was canceled for abandonment, and subsequently, also prior to that date, upon his statement under oath that he had not theretofore perfected or abandoned a homestead entry, was permitted to make another entry, for 160 acres, which was later also canceled for abandonment, will not be heard to claim that the later entry so made by him, which on its face was regular and legal, was a nullity, in order to bring himself within the terms of section 2306, Revised Statutes, as one who prior to the adoption of the Revised Statutes had "entered under the homestead laws a quantity of land less than 160 acres." 41–506

267. A homestead entry for less than 160 acres, made subsequent to June 22, 1874, the date of the adoption of the Revised Statutes, but based upon a soldiers' declaratory statement filed prior to that date, is a proper basis for soldiers' additional right under section 2306 of the Revised Statutes. 42–215

268. Where one entitled under section 2 of the act of March 2, 1889, to make a second homestead entry for 160 acres, and also entitled to make a soldiers' additional entry under section 2306, Revised Statutes, makes entry in exercise of the former right, which entry is subsequently abandoned and relinquished without consideration, his soldiers' additional right will not be held defeated or destroyed by such second entry never perfected. 42–607

269. Where a power of attorney to locate a soldiers' additional right and to sell the land so located is executed in blank without specifying the particular land to be located thereunder, the soldier is thereby estopped, as between himself and the claimant under the power, from claiming any further benefit from the additional right, regardless of whether or not the blank in the power has been filled in by inserting the description of a particular tract of land; but where delay on the part of the attorney in fact in pursuing his claim under the power, or apparent abandonment of the former claim thereunder, has resulted in a transfer of the right by the soldier and satisfaction thereof by the Government, no further exercise and satisfaction thereof will be permitted. 42–219

270. Where an application to locate a soldier's additional right is rejected for insufficient evidence, and there is no adjudication of the invalidity of the right sought to be located, the papers filed in connection with the application may be returned to the applicant. 44–387

271. A soldier's additional entry under section 2306, Revised Statutes, canceled for failure of the entryman, during a long term of years, to furnish a required affidavit as to the nonmineral character of the land, exhausts the right, and the entryman or assignee of the right is not entitled to have the additional-right papers re-

turned to him with a view to exercising the right a second time. 44–357

272. Land occupied by one qualified to acquire title thereto under the public land laws is not subject to soldiers' additional entry. 45–315

273. The inadvertent issuance of a duplicate certificate of a soldier's additional homestead right, through mistake and without authority of law, does not bind the Government; and when returned will be held under the uniform rule of the department to retain in its possession such papers when adjudged invalid. 47–86

274. A soldier, honorably discharged, who reenlists and later terminates that military service by desertion, is not deemed to be "honorably discharged" within the meaning of section 2304 of the Revised Statutes, hence no right under section 2307 can be based upon his service. 47–325

275. The rights of an applicant who has complied fully with the regulations pertaining to the making of soldiers' additional homestead entries in Alaska and made timely proof of such requirements, relate back to the date of the application and are not affected by a subsequent withdrawal. 48–165

276. The date of muster in, not enrollment, marks the commencement of military service in the Army of the United States, for which credit may be accepted as a basis for a claim for an additional right under section 2306, Revised Statutes. 48–318

277. The soldiers' additional right granted by section 2306, Revised Statutes, must be accorded the quality of inheritability and, if not exercised or transferred by the donee, passes to his estate as other property, subject only to the exercise of the rights given by section 2307, Revised Statutes, to the widow and minor orphan children. 51–287

278. Lands within the limits of an area upon which a village had been established by the natives of Alaska and under their actual control are not subject to soldiers' additional entry. 51–430

279. The designation of land as being within the geologic structure of a producing oil field after the filing of an application to make a soldiers' additional entry thereof is not a ground for the rejection of the application. 50–524

(*b*) Basis of Right

280. The mere filing of a soldier's declaratory statement is not the equivalent of an entry within the meaning of section 2306, Revised Statutes, and is not therefore a proper basis for additional right under that section. 43–295

281. A soldier's declaratory statement which never ripened into a homestead entry is not a sufficient basis for a soldiers' additional right under section 2306, Revised Statutes. 43–300

282. The making of a soldier's additional entry under the act of June 8, 1872, prior to the adoption of the Revised Statutes, for an amount of land which added to the original entry aggregates 160 acres, which additional entry was subsequently canceled, does not exhaust the soldiers' additional right, which may be exercised under section 2306, Revised Statutes, notwithstanding the provision in that section limiting the right of additional entry thereunder to persons who have "heretofore entered under the homestead laws a quantity of land less than 160 acres." 43–205

283. Where a homestead entryman, in pursuance of opportunity afforded him by the Land Department, elected to have his entry canceled *in toto*, because of conflict with a State swamp-land selection, with the privilege of exercising his homestead right elsewhere without impairment, such canceled entry furnishes no basis for a soldiers' additional right. 44–244

284. The act of June 22, 1874, adopting the Revised Statutes, took effect from the first moment of that day, and an entry based on a soldier's declaratory statement filed on that date is not a proper basis for a soldiers'

additional right under section 2306, Revised Statutes, which limits the right of additional entry thereunder to persons who had theretofore made entry for less than 160 acres. 44–541

285. As a basis for a soldiers' additional right the soldier must have "served 90 days in the Army of the United States"; and the fact that for pensionable purposes he was held to have been in the service of the United States for a period of 90 days within the meaning of section 4701, Revised Statutes, does not establish that he "served 90 days in the Army of the United States" within the meaning of section 2304, Revised Statutes, on which his soldiers' additional right depends. 44–502

286. Where entries based on scrip are adjudged fraudulent and are canceled, an application for the return of the scrip is properly denied. 46–101

287. The act of August 18, 1894 (28 Stat. 372, 397), validated soldiers' additional homestead certificates, theretofore issued by the Land Department, in the hands of *bona fide* holders for value, and the soldier's right so validated can not be readjudicated, but must be recognized for the full area certified. 46–123

288. An Executive withdrawal under authority of the act of June 25, 1910, does not affect a prior valid application to make a soldiers' additional entry, provided that the applicant has complied with all applicable laws and departmental regulations. 48–94

289. An entry canceled upon a ruling of the Land Department holding that it was invalid because erroneously allowed, although by a subsequent interpretation of the law entries of that character were held valid, does not constitute a good base for an additional right under section 2306, Revised Statutes, where, after cancellation, the entryman impliedly acquiesced in such action by the filing of a formal relinquishment, thereby being restored to his full homestead right. 48–317

(*c*) **Lands Subject to**

290. Lands formerly embraced in a withdrawal for reservoir purposes and restored to the public domain by the act of March 3, 1905, "subject to a homestead entry only," are not subject to appropriation by location of soldiers' additional rights. 43–496

291. Lands formerly embraced within the Fort Fetterman Military Reservation, opened under the act of July 10, 1890, to disposal under the homestead laws only, are subject to appropriation under section 2306, Revised Statutes, by location of soldiers' additional rights. 43–225

292. Lands withdrawn under the act of June 25, 1910, for examination and classification as to coal values, subject to the provisions, limitations, exceptions, and conditions contained in the act of June 22, 1910, are not subject to soldiers' additional locations under sections 2306 and 2307, Revised Statutes, even though such locations be filed with a view to obtaining title to the land with a reservation of the coal therein to the United States; and the Land Department is without authority to receive an application to locate, enter, or select land withdrawn for classification and not yet classified, and hold the same suspended pending the result of a hearing upon the request of the applicant to determine the character of the land with reference to its coal value. 44–483

293. The classification of land as mineral in character under the act of February 26, 1895, does not prevent soldiers' additional location thereof, provided it be satisfactorily shown that the land is in fact nonmineral and subject to such location. 45–110

(*d*) **Entry**

294. A soldier's additional entry is a homestead entry. 43–72

295. Upon due presentation of an application to locate a soldiers' additional homestead right, *prima facie* valid, and in the absence of knowledge

of irregularity of any kind, the Land Department will allow such application. 46–237

296. The restoration of a tract of public land eliminated from a national forest for town site purposes does not preclude the making of a soldiers' additional entry therefor by an occupant whose right of occupancy was not extinguished by the Executive order which established the forest reserve. 49–278

297. The department will apply the doctrine of *res adjudicata* to a case involving a soldiers' additional right under section 2306, Revised Statutes, based upon a homestead entry which was canceled in accordance with the construction of the law then in force, although by subsequent departmental rulings the entry would have been allowed. 49–359

298. The cancellation of an original homestead entry on the ground of invalidity does not exhaust the entryman's homestead right, and such an entry is not, therefore, a sufficient basis upon which to predicate a soldiers' additional right under section 2306, Revised Statutes. 49–359

(e) Assignment

299. The assignee of a soldiers' additional right, claiming through assignment from the administrator of the soldier's estate, the soldier's wife having died prior to his death, will be required, as a prerequisite to recognition of his right to make entry under the assignment, either to show that there were no minor children at the time of the soldier's death, or, if there were any, to file assignments from them or furnish evidence showing affirmatively that they acquiesced in the administration proceedings. 43–360

300. Where a soldier entitled to an additional right under section 2306 of the Revised Statutes executed in blank a power of attorney to locate the right and to sell the land so located, with intent, in accordance with the practice then in vogue, to effect a transfer thereof, a subsequent attempted assignment by him of the same right to another is no bar to allowance of an application to locate the right under the original power; but where the Land Department, without notice of a prior transfer, has satisfied the right by issuance of patent under a subsequent assignment by the soldier, the prior sale can not be recognized. 43–67

301. T, shown by the records of the Land Department to be the owner of a soldiers' additional homestead right, assigned such right for value to another, who assigned it to G, neither of said assignees having knowledge of a previous sale of the right to M; G thereupon surrendered the right to the Land Department, in payment for public land, at a time when neither she nor the Land Department had knowledge of the sale to M. *Held*, that an application to exercise such right by the assignee M was properly rejected. 46–237

302. The bequest by a soldier of his soldiers' additional homestead right is not an assignment within the meaning of the administrative ruling of February 15, 1917 (46 L. D. 32). 46–421

303. Where one of two heirs of a deceased soldier assigned in writing to the other for a valuable consideration her interest in a soldiers' additional right prior to the promulgation of the administrative ruling of February 15, 1917, it will be recognized, even though assigned by the latter subsequent thereto; but the remaining part of the alleged right also embraced in such latter assignment is not within the terms of said administrative ruling and can not therefore be recognized. 46–486

304. The fact that an original homestead entry upon which a soldiers' additional right under section 2306, Revised Statutes, is based, having been canceled upon an erroneous theory, would have been allowed in accord-

ance with subsequent rulings of the department, will not support the "rule of property doctrine" in favor of one claiming under an assignment of such right. 49–361

(*f*) **Widow; Minor Children; Estate**

305. Upon the death of a soldier entitled to an additional right under section 2306, Revised Statutes, leaving persons qualified to take under section 2307, the right passes immediately to those entitled to the succession and does not vest in his estate. 41–361

306. Where the additional right passes to the widow, there being also minors, it is with the condition subsequent of divestiture in case of her death or remarriage without having used or assigned it; but upon passing to the minors the right becomes perfect and absolute in them, dependent upon no condition, qualification, or liability to divestiture. 41–361

307. The right conferred upon the minor children by section 2307, Revised Statutes, is not conditioned upon appropriation thereof by a guardian during their minority, and failure to so appropriate it in nowise affects their title to the additional right under the statute. 41–361

308. The order of succession to a soldiers' additional right is fixed by section 2307, Revised Statutes, first, to the widow, and second, in event of her death or remarriage before use or assignment of it, to the original entryman's minor children; and State laws and State courts are not competent to control, divest, or defeat the order of succession so fixed by statute. 41–361

309. No right of additional entry under sections 2306 and 2307 of the Revised Statutes exists where prior to June 8, 1872, the date the law now embodied in said sections was enacted, the soldier had died, leaving a widow but no children, and the widow had remarried and was at that date a married woman. 41–383

310. An order by a probate court of the State of Missouri, directing an administrator to sell a soldiers' additional right, which does not prescribe the terms of sale, as required by section 117 of the Revised Statutes of that State, is, under the construction placed upon said section by the supreme court of the State, null and void; and an assignment of the additional right based upon such order will not be recognized by the Land Department. 41–451

311. The additional right of entry accruing to the widow of a soldier, under sections 2306 and 2307, Revised Statutes, by reason of an entry for less than 160 acres made by her prior to the adoption of the Revised Statutes, is an unfettered right which she may exercise or dispose of before remarriage, during coverture, or after the death of a later husband, exactly as a soldier may exercise or dispose of his additional right under section 2306. 42–472

312. The rights of minor children in the soldier's additional right of their deceased father, under sections 2306 and 2307 of the Revised Statutes, in event of the remarriage of his widow, are determined as of the date of such remarriage; and only such of the children as are minors at that date have any interest in the additional right. 42–191

313. The right of the widow of a deceased homestead entryman to make homestead entry in her own name is entirely separate and distinct from her right to the soldiers' additional right of her deceased husband; and the fact that she makes a homestead entry in her own right in no wise affects her right to locate or dispose of the soldiers' additional right of her deceased husband. 42–183

314. Where entry is made by guardian for a number of minors under the provisions of section 2307, Revised Statutes, the homestead right of each is thereby exhausted to the extent of the interest of each in such entry. 43–287

315. In contemplation of section 2307, Revised Statutes, the children,

male or female, of a deceased soldier, are "minor orphan children" until 21 years of age, notwithstanding the statutes of the State declare that females reach their majority at 18. 43–337

316. No right of additional entry under sections 2306 and 2307 of the Revised Statutes inures to the minor children of a soldier who never made a homestead entry and whose widow had remarried prior to and was the wife of another at the date of the adoption of the Revised Statutes, notwithstanding the fact that such widow, during her widowhood and prior to the adoption of the Revised Statutes, may have made a homestead entry for less than 160 acres of land. 43–544

317. No right of additional entry under sections 2306 and 2307 of the Revised Statutes inures to the minor children of a soldier who never made a homestead entry and whose widow had remarried prior to and was the wife of another at the date of the adoption of the Revised Statutes, notwithstanding the fact that such widow, during her widowhood and prior to the adoption of the Revised Statutes, may have made a homestead entry, for less than 160 acres of land. 43–544

318. The term "minor orphan children" employed in section 2307, Revised Statutes, to designate persons entitled to soldiers' additional rights under certain circumstances, contemplates that legally adopted children of a soldier shall stand on the same footing, so far as such rights are concerned, as the legitimate children of his body. 44–65

319. An assignment of a soldiers' additional right, or the affidavits accompanying the same, must clearly and specifically describe and identify the particular right assigned; and a general bill of sale by a soldier entitled to an additional right, covering all of the personal goods and chattels of which he may be possessed, can not be recognized as an assignment of such right. 45–99

320. The Land Department is not charged with the duty of supervising the transfer of soldiers' additional homestead rights, and until the filing of an application to locate such a right, it will not undertake the determination of questions connected with the assignment thereof. 46–237

XIII. Second

321. Circular of September 26, 1914, under act of September 5, 1914, providing for second homestead entries. 43–408

322. Instructions of March 24, 1917, under act of February 20, 1917. (Circular No. 540.) 46–70

323. Instructions of March 15, 1920; application for second homestead entry as basis for additional stock-raising homestead. (Circular No. 673.) 47–343

324. Instructions of April 12, 1921; validation of second homestead entries by act of March 4, 1921. 48–65

325. Instructions of April 2, 1925, second homestead entries. (Circular No. 990.) 51–84

326. The fact that a homestead entryman received for the relinquishment of his entry a small fee paid to a commissioner for executing his homestead entry papers, in addition to the filing fees paid to the local officers, will not disqualify him to make second entry under the act of February 3, 1911. 41–523

327. The term "filing fees," as used in the act of February 3, 1911, includes any moneys required by law to be paid at the time of the making of a homestead entry; and an entryman of former Indian lands who relinquished his entry for an amount not exceeding the fees and commissions and the installment of the purchase price paid by him at the time of making the entry, is within the purview of that act. 41–420

328. Where a homestead entry has been absolutely abandoned, and is subject to cancellation on contest or governmental proceedings on that ground, the former entryman, by thereafter relinquishing the entry and selling the

movable improvements thereon at less than cost and well within their reasonable value, does not disqualify himself to make second homestead entry under the provisions of the act of February 3, 1911. 41–336

329. A homestead entryman who executes a relinquishment and places it in the hands of another, who disposes of it for a valuable consideration in excess of the filing fees, is disqualified to make second entry under the act of February 3, 1911, regardless of whether he actually received any part of the consideration for which it was sold. 42–78

330. The second homestead acts of April 28, 1904, February 8, 1908, and February 3, 1911, deny the right of second homestead entry to one who relinquished his former entry for a consideration in excess of the filing fees, but the second homestead act of June 5, 1900, contains no such limitation; and one who after relinquishment of a former entry made settlement prior to the act of June 5, 1900, and has continued to reside upon the land, is entitled, if otherwise qualified, to make second entry under that act, notwithstanding he may have received for his relinquishment a consideration in excess of the filing fees. 42–487

331. Where a second homestead entry under the act of February 3, 1911, fails of consummation because of honest mistake of the entryman as to the character of the land, or for other sufficient reason, not the fault of the entryman, such futile effort to obtain the benefits of the act will not be held to exhaust his right of second entry thereunder. 43–362

332. Where one entitled under section 2 of the act of March 2, 1889, to make a second homestead entry for 160 acres, and also entitled to make a soldiers' additional entry under section 2306, Revised Statutes, makes entry in exercise of the former right, which entry is subsequently abandoned and relinquished without consideration, his soldiers' additional right will not be held defeated or destroyed by such second entry never perfected. 42–607

333. The laws and regulations relating to the payment of fees and commissions in connection with original homestead entries apply with equal force to second homestead entries; and an application to make second homestead entry, not accompanied by the requisite fee and commissions, is not a complete application and does not segregate the land. 45–189

334. Where an entry is relinquished without consideration following discovery that, because of the character or small area of the land, a living can not be made thereon, and it further appears that no vacant contiguous land can be added, the entryman will be deemed to have abandoned the entry "because of matters beyond his control." 46–224

335. The provisions of the act of September 5, 1914, requiring a showing as to "the prior entry or entries" does not contemplate that one who had been duly allowed to make a second homestead entry under the act of February 8, 1908, subsequently canceled, should be required thereafter to make a further showing as to the loss of the original entry in support of an application to make a third homestead entry under the former act. 47–11

336. Relinquishment of a homestead entry by a claimant because of establishment of residence in another State in order to institute divorce proceedings is the voluntary act of such entryman; and he is not therefore entitled to the benefit of the act of September 5, 1914, authorizing the allowance of a second homestead entry where the former entry was "lost, forfeited, or abandoned because of matters beyond his control." 47–278

337. The fact that a settler has made a former homestead entry and is not therefore entitled to make a second entry under the provisions of the act of September 5, 1914, is not a bar to the exercise of the preference right

of settlers conferred by section 5 of the act of June 9, 1916. 47–297

338. In support of an application for second entry under the act of September 5, 1914, one is not required to demonstrate the existence of obstacles such as would amount to an absolute impossibility of holding and perfecting his former entry; it is sufficient if the excuse be such as would govern the mind of a well-disposed person acting in good faith and without speculative intent. 47–344

339. For the purpose of contest, the rule that the six months within which residence must be established begins to run from the date of entry is not applicable to a second homestead entry made under the act of September 5, 1914, but, as against such entry, the time does not begin to run until the entryman is properly notified of the allowance of the entry. 48–516

340. An application for a second homestead entry under the act of September 5, 1914, filed by one having the requisite qualifications assumes, during the pendency of action as to the question of its allowance, the status of an entry within the operation of the oil leasing act of February 25, 1920, irrespective of whether or not he executed a formal relinquishment, and confers upon the applicant a right to prospect the land superior to that of a prior applicant for a permit without a preference right. 48–543

XIV. Kinkaid Act

341. Revised regulations of December 18, 1912, under the Kinkaid Act. 41–492

342. Revised regulations of July 17, 1913. 42–224

343. The provisions of section 6 of the act of March 2, 1889, authorizing additional homestead entries, apply only to ordinary homestead entries of less than 160 acres, and have no reference whatever to entries made under the provisions of the Kinkaid Act, allowing entries in certain territory not to exceed 640 acres. 41–126

344. Section 7 of the act of May 29, 1908, amending the Kinkaid Act and authorizing one who has an entry thereunder of less than 640 acres to enter sufficient contiguous land to aggregate 640 acres, has no application to one whose entry under the Kinkaid Act was limited to less than 640 acres because of the fact that he had theretofore made entry under the general provisions of the homestead law, said section contemplating that the aggregate of all entries by one person—under the general homestead law, the Kinkaid Act, and the amendatory act—shall not exceed 640 acres. 41–285

345. Where one who had made entry under the Kinkaid Act and received patent thereon was permitted, prior to August 24, 1912, to make another entry under that act for an amount of land which added to the area embraced in his first entry aggregated 640 acres, such second or additional entry, although not authorized by law at the time made, was validated by the act of August 24, 1912. 43–91

346. While the provisions of the Kinkaid Act are applicable only to certain designated lands in Nebraska, Congress has made no provision for the allowance of enlarged homestead entries in that State. 47–143

347. One who is qualified to make an additional entry under the proviso to section 2 of the so-called Kinkaid Act of April 28, 1904, as amended by the act of May 29, 1908, by reason of his ownership and occupation of the land originally entered, is qualified to make an original entry under the stock-raising homestead act for such an area of designated land as, when added to the area originally entered, will aggregate approximately 640 acres. 49–286

348. The Kinkaid law, act of April 28, 1904, has no relevance to the right to make entry under the stock-raising homestead act of one who has not made an entry under the former act or in the territory affected by that act,

or who, having made such entry, has not, under the Kinkaid law, the right to make an additional entry. 50–22

XV. Enlarged

349. Instructions of August 14, 1912, concerning additional entries under enlarged homestead acts. 41–149

350. Instructions of March 17, 1913, concerning additional entries under the enlarged homestead acts. 42–345

351. Instructions of June 25, 1914, relating to additional entries under section 6 of the enlarged homestead act. 43–286

352. Circular of March 16, 1915, under act of March 3, 1915, extending enlarged homestead act to Kansas. 44–26

353. Circular of March 16, 1915, under act of March 4, 1915, extending enlarged homestead act to South Dakota. 44–25

354. Instructions of April 17, 1915, under act of March 3, 1915, amending sections 3 and 4 of the enlarged homestead act. 44–66

355. Instructions of April 17, 1915, under act of March 4, 1915, concerning enlarged homestead entries upon petitions for designations. 44–68

356. Circular of April 29, 1915, concerning payment of Indian price for lands in connection with applications to enter filed with petitions for designation under act of March 4, 1915. 44–88

357. Circular of December 24, 1915, allowing credit for military service on entries under section 6 of the enlarged homestead acts. 44–504

358. Circular No. 486 of July 8, 1916, under act of July 3, 1916, concerning additional entries of noncontiguous lands under the enlarged homestead acts. 45–208

359. Instructions of April 11, 1916, amending paragraph 6 of instructions of April 17, 1915, relating to petitions for designation under act of March 4, 1915. 45–33

360. Instructions of October 30, 1916 (Circular No. 514), under act of September 5, 1916, concerning additional entries in Idaho under the enlarged homestead act. 45–493

361. Instructions of December 26, 1916 (Circular No. 517), regarding lands in North and South Dakota and Kansas not subject to designation under the enlarged homestead act. 45–585

362. Designation under enlarged homestead acts of lands eliminated from national forests. (Instructions.) 46–43

363. Instructions of January 12, 1921, distinguishing applications under enlarged homestead and stock-raising laws. 47–629

364. Instructions of April 4, 1921; validation of enlarged homestead entries; act of March 4, 1921. (Circular No. 746.) 48–57

365. Circular of August 6, 1921, amending paragraph 6 of the regulations of July 8, 1916, relative to additional entries under enlarged homestead act. (Circular No. 770.) 48–174

366. Order of September 22, 1926, designation lists under the enlarged and stock-raising homestead acts; water holes; Circular No. 1066, modified. (Circular No. 1095.) 51–597

367. Lands enterable under the enlarged homestead act. 46–423

368. The holding of 160 acres by desert-land entry does not disqualify an applicant under the enlarged homestead act from making entry under that act for the full amount of 320 acres. 41–316

369. After the submission of commutation proof upon a homestead entry such entry can not be made the basis for an additional entry under the enlarged homestead act of February 19, 1909, although payment of the commutation money had not been made at the time the additional application was filed. 41–367

370. A homestead entry upon which final proof was not submitted within the period fixed therefor by statute can not, after the expiration of such period, be made the basis for an addi-

tional entry under section 3 of the act of February 19, 1909. 41–134

371. An additional entry under section 3 of the enlarged homestead act of February 19, 1909, can not be allowed where the additional lands applied for, together with the lands embraced in the original entry, exceed 1½ miles in length. 41–282

372. One who made homestead entry for less than 160 acres and subsequently made additional entry under section 6 of the act of March 2, 1889, for an amount of land which together with the original entry aggregates 160 acres, is not entitled to make further entry under section 3 of the enlarged homestead act as additional to the entry made under said section 6 of the act of 1889. 41–381

373. One who by making adjoining farm entry exhausted his homestead right is entitled under the provisions of section 6 of the act of March 2, 1889, if otherwise qualified, to make another entry for such an amount of lands as added to the amount embraced in the adjoining farm entry will not exceed 160 acres; but is not entitled to make further entry, by virtue of the provisions of section 3 of the enlarged homestead act of February 19, 1909, as additional to the entry made under the act of 1889. 41–138

374. An entryman in making proof of residence under the enlarged homestead act of February 19, 1909, is entitled, under section 2305 of the Revised Statutes, to credit for military service; but the provisions of said section can not be extended to relieve him from the specific requirements of the enlarged homestead act respecting cultivation. 41–366

375. The provision in the act of August 30, 1890, limiting the amount of land that may be acquired by one person under the agricultural public land laws to 320 acres, does not prevent one who has acquired title to 160 acres under the desert land law, and who is entitled to make homestead entry for 160 acres under the general provisions of the homestead law, from making entry and acquiring title to 320 acres under the enlarged homestead act of February 19, 1909. 41–418

376. The act of August 24, 1912, validating certain entries theretofore allowed under the enlarged homestead act, applies only in instances where at the time of making the enlarged entry the entryman had "acquired title to a technical quarter section of land under the homestead law" containing less than 160 acres; and has no application where the entryman at the time of making the enlarged entry had acquired title to 80 acres under an original homestead entry and had a subsisting additional entry under section 6 of the act of March 2, 1889, for a tract of land in a different quarter section which together with the original entry aggregated 160 acres. 41–381

377. Residence and cultivation to support an additional entry under the enlarged homestead act of February 19, 1909, must be performed subsequently to the date of such entry. 42–347

378. Both the original enlarged homestead act and the act of February 11, 1913, amendatory thereof, specifically require that an additional entry thereunder must be "cultivated to agricultural crops other than native grasses beginning with the second year of the entry"; and grazing of the land does not meet such specific requirement as to agricultural cultivation. 42–347

379. Sections 3 of the enlarged homestead acts of February 19, 1909, and June 17, 1910, and the act of February 11, 1913, amending said sections, all provide that additional entries thereunder may be made only by "homestead entrymen of lands of the character herein described upon which final proof has not been made"; and the Land Department is without authority to allow additional entries under said sections after the submission of final proof upon the original entry, no matter how strong the equitable

considerations in favor of the allowance of such entries may be. 42–407

380. The fact that lands are embraced in a desert-land entry will not preclude their designation under the enlarged homestead act, if in all other respects subject to such designation. 42–262

381. Residence is not required upon an entry under section 6 of the enlarged homestead act of February 19, 1909, and the preference right of entry conferred by section 3 of the act of May 14, 1880, upon a settler on the public lands, has no application to a settler seeking to make enlarged homestead entry of land designated under said section 6. 42–159

382. The act of August 24, 1912, validating certain enlarged homestead entries where the entryman before making the entry had acquired title to a technical quarter section of land under the homestead law, has no application except in instances where the former entry was for a "technical quarter section." 42–89

383. An entryman under section 6 of the enlarged homestead act of February 19, 1909, who complies with the requirements of the law as to improvement, cultivation, and residence in the vicinity, is an actual settler within the meaning of the act of August 24, 1912, providing that unreserved public lands in the State of Utah withdrawn or classified as oil lands, or as valuable for oil, shall be subject to entry "under the homestead laws by actual settlers only," and certain other laws; and lands in said State withdrawn or classified as oil, or valuable therefor, are subject to designation and entry under said section 6. 42–427

384. Lands in the Nez Perce Indian Reservation are not subject to designation under the enlarged homestead act. 43–508

385. There is no provision of law permitting a homestead entryman to withdraw the final proof submitted upon his entry with a view to bringing himself within the provisions of section 3 of the act of February 19, 1909, authorizing the entry of contiguous land as additional to an original entry "upon which final proof has not been made." 43–326

386. The right acquired by settlement upon public lands under the act of May 14, 1880, is coextensive with the right of entry conferred by the homestead laws; and a settler upon unsurveyed land subsequently designated under the enlarged homestead act is, upon the filing of the township plat of survey, entitled to make entry of the land embraced in his settlement claim to the full area of 320 acres permitted by the enlarged homestead act. 43–60

387. Lands within the portion of the Standing Rock Indian Reservation, in North Dakota, opened under the provisions of the act of May 29, 1908, are subject to designation under the enlarged homestead act as amended by the act of June 13, 1912. 44–1

388. An adjoining farm entry under section 2289, Revised Statutes, is a proper basis for an additional entry under the enlarged homestead act where the lands in both the adjoining farm entry and the additional entry have been designated under the enlarged homestead act. 44–576

389. A settler upon unsurveyed land subsequently designated under the enlarged homestead act is, upon the filing of the township plat of survey, entitled to make entry of the land embraced in his settlement claim up to the full area of 320 acres permitted by the enlarged homestead act. 44–414

390. Lands within a national forest restored to entry under the act of June 11, 1906, are subject to appropriation only under that act and can not be included in an entry under the enlarged homestead act; nor can an entry under said act of June 11, 1906, be made the basis for an additional entry under section 3 of the enlarged homestead act. 44–413

391. Residence is not required upon an entry made under section 6 of the

enlarged homestead act of February 19, 1909, and the deserted wife of one who made entry under that section is entitled to submit final proof and obtain patent for such entry in her own name under the act of October 22, 1914, without showing residence upon the land. 44–494

392. The act of March 4, 1915, validating certain enlarged homestead entries by persons who had theretofore made homestead entries for less than 160 acres, is applicable only to *entries* made prior to January 1, 1914, and furnishes no authority for allowing entry upon a settlement initiated prior to that date. 44–140

393. A widow, heir, or devisee upon whom has devolved a homestead entry through the death of the entryman has the same right to make additional entry under the enlarged homestead act as the deceased entryman had, provided he or she has continued to reside upon, cultivate, and improve the land embraced in the original entry since the death of the entryman, which additional entry may be completed by residence, cultivation, and improvement upon the land embraced in the original entry. 44–234

394. An entry made in good faith prior to January 1, 1914, under section 3 of the enlarged homestead act of February 19, 1909, as additional to an additional entry made under section 6 of the act of March 2, 1889, is validated by the act of March 4, 1915. 44–329

395. The principal change made in the enlarged homestead laws by section 3 of the act of March 3, 1915, was to allow additional entry to be made by an entryman who had already submitted final proof upon his original entry; and only such entrymen can avail themselves of this provision who under the enlarged homestead laws as theretofore existing are "qualified entrymen under the homestead laws of the United States." 44–374

396. One who made homestead entry for less than 160 acres and subsequently made additional entry under section 6 of the act of March 2, 1889, for an amount of land which together with the original entry aggregates 160 acres, is not a "qualified entryman under the homestead laws" within the meaning of the enlarged homestead acts, and is therefore not entitled to make additional entry under section 3 of the act of March 3, 1915, as additional to the entry made under section 6 of the act of 1889. 44–374

397. The approval of a right of way under the act of March 3, 1891, does not of itself prevent a designation of the land on application for enlarged homestead entry under the act of March 4, 1915; and where it appears that the applicant for entry will be able to comply with the requirement of section 4 of the enlarged homestead act as to the area to be cultivated, taking the entire area embraced in the application into consideration, notwithstanding the whole or part of certain legal subdivisions may be subject to a right of way for an irrigation reservoir, the entire area may be designated; but if it appear that it will be impossible for the applicant to comply with the requirements as to cultivation, the legal subdivisions subject to the right of way rendering such compliance impossible should be excluded from the designation. 45–27

398. An application to make second entry filed under the enlarged homestead act for undesignated land and showing *prima facie* that the land is subject to entry under said act, which application is suspended to allow the applicant to file petition for designation and to furnish evidence of his qualifications to make second entry, segregates the land during the period of suspension, against a subsequently filed application. 45–34

399. It is incumbent upon an applicant to make entry under the enlarged homestead act to show that the land applied for is of the character subject to entry under that act, notwithstand-

ing the land has been designated by the Government as of such character. 45–197

400. The fact that land contains timber suitable for ordinary agricultural uses, but not of sufficient merchantable value to justify a timber entry of the land, will not prevent entry thereof under the provisions of the enlarged homestead act, where the land is otherwise of the class subject to such entry. 45–197

401. Upon allowance of an application to enter accompanied by a petition for designation under the enlarged homestead act, the rights of the applicant attach as of the date of the filing of the application and petition, and all rights under a conflicting intermediate application are thereupon *co instanti* terminated as to the land in conflict. 45–557

402. Where the widow of a deceased homestead entryman makes an additional entry under section 3 of the enlarged homestead act as amended by the act of February 11, 1913, it is incumbent upon her to make full compliance with the requirements of the homestead law in the matter of residence, as well as cultivation and improvement, upon either the original or additional entry. 45–104

403. The provision in the act of June 6, 1912, requiring "double the area" of cultivation in the case of entries under section 6 of the enlarged homestead act, contemplates double the proportional part or fraction required to be cultivated in the case of other entries—that is, not less than one-eighth of the area during the second year of the entry and not less than one-fourth thereafter. 45–150

404. Where entry for 80 acres was made under the enlarged homestead act as additional to an original homestead entry for 160 acres, and final proof was submitted and patent issued upon the original and additional entries as one entry, the entryman may be permitted to make a further entry for 80 acres under section 3 of the enlarged homestead act as amended by the act of March 3, 1915, as additional to his combined entry, where the land so taken was not subject to entry at the date he made his first additional entry. 45–20

405. Credit for military service may be allowed, under section 2305, Revised Statutes, on entries under section 6 of the enlarged homestead acts of February 19, 1909, and June 17, 1910, upon compliance with the provision of said section requiring residence, cultivation, and improvement for the period of at least one year. 45–324

406. Credit for military service may be allowed, under section 2305, Revised Statutes, on entries under section 6 of the enlarged homestead act of June 17, 1910, upon compliance with the provision of said section requiring residence, cultivation, and improvement for the period of at least one year. 45–451

407. The three-year homestead act of June 6, 1912, does not have the effect to reduce to three years the five-year period of cultivation required upon enlarged homestead entries under section 6 of the act of June 17, 1910. 45–449

408. It is not essential to allowance of an additional entry under the enlarged homestead act of February 19, 1909, as amended by the act of March 3, 1915, that the applicant shall have retained in its entirety his original homestead. 46–28

409. An additional homestead entry of noncontiguous land is not permitted by the act of July 3, 1916 (39 Stat. 344), until final proof upon the original homestead entry has been submitted. 46–50

410. An unperfected entry under section 3 of the enlarged homestead act is no bar to an entry under section 7 of that act as amended July 3, 1916 (39 Stat. 344), where the total area covered by the entries does not exceed 320 acres. 46–84

411. Credit for military service rendered the United States in the Civil War is allowed on entries made under the enlarged homestead acts. 46–115

412. The requirement of section 2305, Revised Statutes, as to at least one year's residence on the land by a soldier or sailor entitled to credit for military service, is satisfied by seven months' actual and five months' constructive residence thereon. 46–115

413. An original entry of record, although subject to cancellation upon proper proceedings, may nevertheless be basis for an additional entry under section 3 of the enlarged homestead act, and the additional entry may be perfected, even should the original be canceled. 46–164

414. Where an additional homestead entry under section 6 of the act of March 2, 1889, is changed by amendment to an entry under section 7 of the enlarged homestead act, including additional contiguous land, residence thereon under the first-named act will be credited to the period required by the later law. 46–168

415. In applying the rule of approximation to additional homestead entries, an excess area contained in a perfected original entry should be eliminated from consideration, except in computing the total acreage applied for. 46–243

416. Although payment was made for an excess area in the original entry, upon making an additional entry the applicant must pay for any excess over the approximate area he was qualified to enter. 46–244

417. One who perfects an entry of 40 acres under the ordinary provisions of the homestead law, and an additional entry of 120 acres under the act of March 2, 1889, the former embracing land not subject to designation under the enlarged homestead act, may thereafter make entry under the act of February 20, 1917, for such an area of designated land as when added to the additional entry will not exceed 240 acres. 46–431

418. Where, upon application made for additional entry under section 3 of the enlarged homestead act (35 Stat. 639), it is found that the cultivation requirements could not be fulfilled were entry permitted, the application will be rejected. 46–432

419. The notice of settlement claim for unsurveyed land filed in the office of the county recorder under a State law is not determinative of a settler's rights, but in order to maintain such a claim for a tract embracing more than a technical quarter section under the provisions of the act of August 9, 1912, it is necessary that the exterior boundaries of all lands claimed be plainly marked. 46–482

420. In the matter of designation of land under the provisions of section 6 of the act of June 17, 1910, it is the practice as well as the duty of the department to investigate and determine the character thereof; and in the absence of convincing evidence that certain statements in a letter from the applicant were known to be false or were intended to induce favorable designation, it can not be assumed that it was intended or expected that the department would not follow its practice and perform its duty under the statute. 47–8

421. As the additional enlarged homestead entry authorized by section 7 of the act of July 3, 1916, can only be made by one "who shall have submitted final proof" on his original entry, proof in support of such an additional entry embracing incontiguous land within the 20-mile limit must show the required compliance for a period of at least three years from date of such former proof, except that residence may be maintained upon either tract. 47–126

422. While originally the enlarged homestead act of February 19, 1909, did not apply to lands in the State of Idaho, its provisions were extended thereto by the act of June 17, 1910; and the amendment of July 3, 1916, adding section 7 to the original act,

was likewise extended by act of September 5, 1916. 47–29

423. While the provisions of the Kinkaid Act are applicable only to certain designated lands in Nebraska, Congress has made no provision for the allowance of enlarged homestead entries in that State. 47–143

424. The requirement of the act of August 9, 1912, that one seeking to initiate a claim by settlement on land designated under the enlarged homestead law, must plainly mark the exterior boundaries of the land claimed, is so similar to the provision authorizing the initiation of a location on mineral land as to justify like interpretation, and application of the rule adopted under the mineral statute, that the marking is absolutely essential to the acquisition of a preferred right of entry. 47–199

425. The provision of section 7 of the act of July 3, 1916, authorizing the allowance of an incontiguous additional homestead entry with credit for residence maintained upon the original entry when the distance between the two does not exceed 20 miles, does not permit of an additional entry by a married woman while residing upon the land embraced in her husband's entry; nor is such an entry authorized under the act of April 6, 1914, relating to the rights of homesteaders who intermarry. 47–197

426. The provisions of the enlarged homestead acts limiting the length of entries thereunder to 1½ miles applies only to original entries; and one who seeks to enter lands contiguous to his original entry and is unable to apply for a tract in more compact form will not be limited as to the length of the combined areas. 47–370

427. An original entry may be allowed under the act of February 19, 1909, as amended by the act of July 3, 1916, for lands exceeding 1½ miles in extreme length, provided that they are located in as compact a body as the availability of the public lands, subject to entry, will permit; but the general rule as to limit of length must be adhered to where sufficient lands remain subject to entry. 48–36

428. An application to make an enlarged homestead entry for land subject thereto, accompanied by the required showing and payment, filed prior to the designation of the land, has, by express provision of the act of March 4, 1915, the segregative effect of an entry, pending designation, and upon its allowance becomes an entry by relation as of the date of the filing of the application, in so far as rights under the oil leasing act of February 25, 1920, are concerned. 48–350

429. An applicant who has applied to enter and have designated lands under the stock-raising homestead act acquires a right of entry, when the land is designated, superior to that of a subsequent applicant under the enlarged homestead act, who is asserting a preferential claim by reason of prior settlement, as to the lands outside of the particular legal subdivision or subdivisions upon which the improvements of the latter are situated, unless the exterior boundaries of the asserted settlement claim had been plainly marked. 48–451

430. The rule that a settler upon unsurveyed land subsequently designated under the enlarged homestead act is entitled to enlarge his claim to the full extent of 320 acres, is not applicable where an adverse claim intervenes prior to designation of the land; and an intervening withdrawal is such an adverse claim as will prevent the extension of the settlement claim to include more than 160 acres. 48–571

431. An entry under section 7 of the enlarged homestead act, upon which residence is required, is an original entry within the meaning of section 4 of the stock-raising homestead act, and one holding such an entry is qualified to make an additional entry under the latter section for such an area of designated land as, when added to the

area embraced in former entries, will not exceed 640 acres; and the fact that two of its subdivisions are contiguous to the original entry is immaterial. 49–244

432. The act of February 20, 1917, extended the right to make an additional entry under the enlarged homestead acts to one who has obtained title under the general provisions of the homestead law to less than one quarter section of undesignable land, and one who has acquired title to a quarter section, certain subdivisions of which are within a national forest and, therefore, undesignable, while the remainder is of the character contemplated by the enlarged homestead acts, is entitled to its benefits. 49–263

433. One who possessed the requisite qualifications at the time he made an original homestead entry is not disqualified from making an additional entry under the enlarged or stock-raising homestead acts because of the ownership of land acquired after making the original entry. 51–266

434. The limitation in section 7 of the enlarged homestead act, which relates to the quantity of lands that a settler or entryman may acquire thereunder, has no application to lands embraced in entries made prior to the act of August 30, 1890, or to settlements made prior thereto and subsequently carried to entry. 51–524

435. The fact that one had made an additional entry under section 3 of the enlarged homestead act will not preclude him from making a further additional entry under that section regardless of the manner in which the prior entries were perfected, if the combined areas of the original and additional entries do not exceed 320 acres. 51–581

XVI. Forest Homesteads

See NATIONAL FORESTS; SURVEY, 50–686.

436. Regulations of April 30, 1913, governing survey of national forest homesteads. 42–124

437. Regulations of August 19, 1913, concerning homestead entries within national forests under act of June 11, 1906. 42–331

438. Notice to publishers concerning publication of notices of the opening of national forest lands under act of June 11, 1906. 42–214

439. Order of March 4, 1914, concerning closing of cases involving entries within forest reserves. 43–165

440. Instructions regarding applications for reduction of area of cultivation on homesteads in national forests. (Circular No. 530.) 46–43

441. Instructions of December 15, 1919, amending section 5 of Circular No. 263, relative to publication of lists of national forest homesteads. (Circular No. 663.) 47–303

442. Regulations of May 2, 1922, homestead entries within national forests. (Circular No. 263, revised.) 48–9

443. A survey and entry of lands in a national forest under the act of June 11, 1906, need not include the entire body of land applied for, listed, and opened to entry under that act, but the entryman may take any portion thereof in compact form. 42–573

444. It is no objection to a homestead entry under the act of June 11, 1906, that it extends across a township line and lies partly in each of two adjoining townships. 42–573

445. Any forest reserve homestead listed under the act of June 11, 1906, which does not exceed 160 acres in area and which may be contained in a square mile, the sides of which extend in cardinal directions, will be regarded as within the provisions of said act limiting such homestead entries to "not exceeding 160 acres in area and not exceeding 1 mile in length." 42–20

446. Any tract of agricultural land within a forest reserve, not exceeding 160 acres in area, which may be contained in a square mile the sides of which extend in cardinal directions, is within the purview of the act of June 11, 1906. 42–148

447. The form of agricultural tracts within forest reserves listed for entry under the act of June 11, 1906, is wholly within the discretion of the Secretary of Agriculture, so long as the inhibitions contained in the act are not violated, and the Land Department has no jurisdiction to prescribe the form of an entry under that act, provided it is not more than 1 mile in length and does not embrace more than 160 acres. 42–148

448. The Secretary of Agriculture has authority, on his own motion, to list lands for entry under the act of June 11, 1906; and where lands are so listed by him, no preference right is awarded by the statute nor can be claimed except by settlers who were actually occupying the lands prior to January 1, 1906. 42–175

449. The act of June 11, 1906, contemplates that the lands which the Secretary of Agriculture may, in his discretion, list with the Secretary of the Interior with request that they be opened to entry under the homestead laws, shall be lands which are subject to homestead entry. 42–175

450. No rights are acquired by the filing of an application for the listing of lands under the act of June 11, 1906, while such lands are embraced in a prior uncanceled homestead entry. 42–175

451. Lands listed for opening under the act of June 11, 1906, before the dates of eliminating proclamations, are subject to entry under that act by the persons on whose applications the listings were made, but can not be entered by any other persons. 44–29

452. The provision in the proclamation of March 2, 1907, creating the Weiser National Forest, that lands embraced in any legal entry, lawful filing, or selection shall be excepted therefrom, provided the entryman or claimant continues to comply with the law, contemplates a determination by the appropriate tribunal, after notice and opportunity to be heard as to whether there has been such compliance; and until an entry, filing, or selection has been so finally adjudicated and canceled, the land is not subject to listing or entry under the act of June 11, 1906. 42–175

453. One who in good faith settled upon lands prior to their withdrawal for forestry purposes and who makes entry thereof under the act of June 11, 1906, is entitled to claim credit for residence from the date of such settlement. 42–475

454. Where a homestead entryman at the time of withdrawal of the lands for forest purposes was in default, but no proceeding was instituted against his entry until after he had cured his default by further compliance with law and the submission of proof which would have entitled him to patent had no withdrawal intervened, he is entitled to patent notwithstanding such withdrawal. 42–405

455. Where a homestead entryman was in default at the time of reservation of the lands for forest purposes he can not thereafter cure the default in the face of the reservation. 43–538

456. The act of June 11, 1906, authorizing the opening of agricultural lands within national forests to homestead entry, does not authorize either the Secretary of the Interior or the Secretary of Agriculture to impose upon entrymen thereunder, or insert in patents issued upon the lands, any conditions, limitations, restrictions, or reservations not specifically authorized by existing laws. 42–408

457. Where by change of boundary lands are eliminated from a national forest which had prior thereto been listed by the Secretary of Agriculture for restoration under the act of June 11, 1906, upon the application of a qualified homesteader, or had been settled upon prior to January 1, 1906, and the settlement since maintained, the preference right secured to such applicant or settler under said act is not terminated or defeated by such elimination. 42–425

458. Where lands in a national forest embraced within a pending entry are restored to the public domain and the entry is permitted to remain intact, publication of the usual formal notice of restoration should not be made. 42–471

459. One who applies to have land within a national forest listed for opening under the act of June 11, 1906, and is thereafter granted a special use permit to occupy the land, is entitled, in submitting proof upon his entry made in pursuance of such listing, to credit for residence since the date of the special use permit. 43–186

460. The act of June 11, 1906, specifically declares that upon the listing of lands thereunder by the Secretary of Agriculture the Secretary of the Interior shall declare such lands open to settlement and entry, but that they shall not be subject to settlement and entry until the expiration of 60 days from the filing of the list in the local office; and these requirements are mandatory and jurisdictional and can not be dispensed with by the Land Department. 43–522

461. No claim is initiated to land under the act of June 11, 1906, until the Secretary of Agriculture has listed the land for entry, such list has been filed in the local land office, publication thereof made, and application to enter filed by the applicant for the listing; and while an entryman under that act may be given credit for residence during his occupancy of the land under a special use permit prior to making entry, he does not by such occupancy acquire a settlement claim to the land within the meaning of the proviso to section 1 of the act of February 28, 1911, excepting settlement claims from the withdrawal declared by that act. 43–526

462. A settler upon unsurveyed lands subsequently included in a national forest may elect to stand upon his rights as a settler and await survey of the township, when he may make entry of 160 acres or less under the general homestead laws, or he may, without waiting for the regular survey, apply for listing of the lands under the act of June 11, 1906; and where he applies for listing under that act, and makes entry of such part of the lands embraced in his settlement as is found to be of the character subject to listing and opened to entry under the act, he thereby waives all claim to the remainder and can not, after survey of the township, make entry under the general homestead law for the entire area covered by his settlement claim. 43–237

463. Commutation of a homestead entry included within a forest reservation can not be allowed unless it be shown that at the date of the reservation the homestead law was being complied with by the entryman. 43–53

464. By the excepting clause in the proclamation of May 6, 1905, creating the Klamath Forest Reserve, it was intended to except from the reservation those legal entries upon which the entrymen were at that time complying with the law and continued to comply with the law after the reservation was made. 43–538

465. A preference right of entry is acquired by a successful contest against an entry within a forest reservation, but such right remains suspended until the land shall be restored and become subject to entry. 43–458

466. Lands withdrawn by section 1 of the act of February 28, 1911, for the benefit of the city of Seattle, and not within the Cedar River Basin, are not restored to their former status by section 2 of that act until the survey has been completed and approved by the Secretary of the Interior. 43–525

467. The act of June 11, 1906 (34 Stat. 233), awards one who has applied for the listing of lands in a national forest merely "a preference right of settlement and entry," and no claim under such act is initiated until the Secretary of Agriculture has listed the land for entry, such list has been filed in the local land office, pub-

lication thereof made, and the application to enter filed by the applicant for the listing. 45–593

468. Upon elimination from a national forest of surveyed school lands, the right of the State under its grant attaches immediately and is paramount to an application to make entry, tendered by the applicant for the listing after the land has been opened to entry, which opening is subsequent in time to the elimination of the land from the national forest. 45–593

469. Prior lawful occupancy of land within a national forest under a special use permit, by one who, subsequent to enactment of the statute of June 6, 1912, procures the listing and homestead entry thereof under the act of June 11, 1906, is not settlement or residence within the purview of the act of March 4, 1913; and such entry can only be perfected under the provisions of said act of June 6, 1912. 47–173

470. Where because of the ownership of more than 160 acres of land one is disqualified at date of settlement and also at date the tract involved is embraced in a forest withdrawal, but is duly qualified at time of allowance of the homestead entry based on such settlement, and no fraud in connection therewith being disclosed, said entry thus "invalid solely because of the erroneous allowance," comes within the provisions of section 1 of the act of March 3, 1911, and is validated thereby. 47–45

471. An entry for national forest lands under the act of June 11, 1906, allowed upon an application prematurely filed, and defective because not executed before a qualified officer, is not void, but merely voidable, and all defects are cured by the subsequent filing of a properly executed supplemental application. 48–199

XVII. Stock-raising Homesteads.

472. Instructions of January 27, 1917, under act of December 29, 1916, regarding stock-raising homesteads. 45–625

473. Instructions of April 6, 1917, regarding military service of stock-raising homesteaders. 46–74

474. Instructions of June 14, 1917 (in letter to Director Geological Survey). 46–252

475. Instructions of July 17, 1918; classification of nonirrigable lands subject to entry. 46–423

476. Regulations, stock-raising homesteads, act of October 25, 1918; additional entries. 46–472

477. Instructions of February 8, 1919, amending second subparagraph of paragraph 13(b) of Circular No. 523. (Circular No. 635.) 47–23

478. Stock-raising homestead circular. (Reprint of July 30, 1919, of Circular No. 523.) 47–227

479. Instructions of October 20, 1919, re additional stock-raising homesteads, act September 29, 1919. (Circular No. 660.) 47–248

480. Instructions of December 19, 1919, construing Circular No. 660, of October 20, 1919. (Circular No. 665.) 47–250

481. Administrative order of August 28, 1919, relative to reservations in patents for stock-raising homesteads of Coeur d'Alene lands. 47–254

482. Instructions of March 15, 1920, amending paragraph 6 of stock-raising homestead circular. (Circular No. 673.) 47–343

483. Instructions of January 12, 1921, distinguishing applications under enlarged homestead and stock-raising laws. 47–629

484. Instructions of March 2, 1921; additional stock-raising entries; effect of prior additional entries under sections 4 or 5 of stock-raising act; preference right of one who made entry under section 7 of enlarged homestead act. 48–28

485. Instructions of March 16, 1921, relating to additional entries under sections 4 and 5 of the stock-raising homestead act. 48–38

486. Instructions of May 3, 1921, relative to improvements on stock-raising homesteads. 48–107

487. Instructions of October 8, 1921, relative to prior settlements on lands in stock driveway withdrawals. 48–220

488. Circular of October 13, 1921, relative to preferential claims under section 8 of the act of December 29, 1916. (Circular No. 782.) 48–225

489. Instructions of November 4, 1921, relative to improvements, residence, etc., on stock-raising homesteads prior to designation. 48–293

490. Stock-raising homestead circular. (Reprint December 14, 1921, of Circular No. 523.) 48–485

491. Instructions of February 9, 1922; stock-raising homestead final proof forms. (Circular No. 807.) 48–438

492. Instructions of February 18, 1922, relative to contests alleging fraud in securing designation. 48–454

493. Regulations of September 9, 1922, stock-raising homesteads; Circular No. 523, amended. (Circular No. 846.) 49–266

494. Instructions of February 2, 1924, petroleum and naval reserves; stock-raising and other homesteads. (Circular No. 913.) 50–261

495. Instructions of July 19, 1924, residence prior to designation on stock-raising homesteads, act of June 6, 1924. (Circular No. 952.) 50–580

496. Stock-raising homestead circular. (Reprint January 2, 1925, of Circular No. 523.) 51–1

497. Instructions of March 12, 1925, lands within petroleum reserves excepted from entry under the stock raising homestead act; Circular No. 913, modified. (Circular No. 983.) 51–65

498. Instructions of May 25, 1926, amending all prior instructions relating to selections, filings, or entries of lands containing springs or water holes. (Circular No. 1066.) 51–457

499. Order of September 22, 1926, designation lists under the enlarged and stock-raising homestead acts; water holes; Circular No. 1066, modified. (Circular No. 1095.) 51–597

500. One seeking to make an additional entry under the proviso to section 3 of the act of December 29, 1916 (39 Stat. 862), must have completed the term of residence required on his original entry, or will have completed it within six months from the date of the filing of his application; and a statement, under oath, showing this, should be filed with the application. 46–367

501. One who applies to make entry under the provisions of the stock-raising homestead act of December 29, 1916, is not required to embrace vacant lands within the 2-mile limit as to compactness, unless such tracts are of the character contemplated by the act and are free from valid adverse claim. 46–445

502. Under the provisions of the act of October 25, 1918, amending the stock-raising homestead act of December 29, 1916, an additional entry may be made for land which is incontiguous but within a radius of 20 miles from the land originally entered, and the entryman may perform the required period of residence on the latter tract if then the owner thereof. 46–485

503. One qualified to make entry under other homestead laws for approximately 40 acres is qualified to make an original entry under the provisions of section 1 of the stock-raising homestead act of December 29, 1916, for such an area of land designated thereunder as when added to the area of the prior perfected entry or entries will not exceed 640 acres, even though the latter area be not designated. 46–509

504. If the area embraced in an unperfected entry under the provisions of the enlarged homestead act be designated as "stock-raising land," such entry may upon application be changed to an original entry under section 1 of the stock-raising homestead act of December 29, 1916, and amended to embrace such an area of

contiguous designated land as when added to the former, and also prior perfected entry if there be any, will not exceed approximately 640 acres. 46–510

505. One who relinquishes an entry, made under the provisions of the homestead laws, embracing an area of less than 640 acres of land of the character described in the stock raising homestead act of December 29, 1916, in order to avail himself of the privilege conferred by section 6 thereof to make an entry for the full area of 640 acres in lieu of the former entry, must support such application with corroborated showing fully meeting the requirements of the act and regulations thereunder, but he is not required to comply also with the terms of the second homestead entry act of September 5, 1914. 47–28

506. In the administration of the stock-raising homestead law it is recognized that small areas of high-grade land may be embraced within a tract "chiefly valuable for grazing and raising forage crops"; such tracts may be designated and entry allowed thereunder, however, where not to exceed one-eighth of the area embraced in the stock-raising homestead is cultivable land. 47–66

507. The petition for designation of land under the stock-raising homestead act of December 29, 1916, may be executed and filed by agent accompanied by the soldiers' declaratory statement, but formal application to make entry must be filed by the claimant within the six months' period specified in section 2309, Revised Statutes. 47–81

508. The preference right accorded to one who files petition for the designation of land under the stock-raising homestead act of December 29, 1916, is not defeated by the preference right of additional entry of adjoining land accorded under the provisions of section 8 of said act, to one who thereafter makes an original homestead entry under section 2289, Revised Statutes; in the former case the right is initiated by the filing of a proper application for designation, and in the latter by the allowance of the original entry. 47–150

509. The preference right granted by section 8 of the stock-raising homestead act of December 29, 1916, is one of the "preference rights conferred by existing laws" expressly excepted from the operation of the joint resolution of February 14, 1920, as amended by the joint resolution of January 21, 1922, which granted preference right of entry to ex-service men of the war with Germany. 51–452

510. Under the act of December 29, 1916, authority is vested in the Secretary of the Interior to designate lands which "in his opinion" are subject thereto under the terms of said act; and when his opinion has been so expressed and the authority exercised fairly, without deception or fraud, and an entry has been duly allowed as result thereof, it will not be subject to contest on the charge that such designation was improperly or erroneously allowed. 47–225

511. The distance of land from markets, schools, and railroads can not be taken into consideration in determining whether the surface thereof "is chiefly valuable for grazing and raising forage crops," and such land subject to designation under the provisions of the stock-raising homestead act of December 29, 1916. 47–339

512. Where one makes an additional entry of land contiguous to his existing homestead entry, under the provisions of the act of December 29, 1916, residence may be maintained upon the land embraced in either entry; hence in any contest thereafter initiated on ground of abandonment an allegation of failure of entryman to reside upon the land embraced in his original entry is insufficient. 47–393

513. The term "one quarter section," as used in sections 2289 and 2298, Revised Statutes, means a subdivision of 160 acres, and where an

original entry contains more than that amount, for the excess of which payment is made, such excess is to be disregarded in applying the rule of approximation and in computing the area that the entryman may embrace in an additional entry under either the enlarged or the stock-raising homestead act. 48–163

514. An applicant who has applied to enter and have designated lands under the stock-raising homestead act acquires a right of entry, when the land is designated, superior to that of a subsequent applicant under the enlarged homestead act, who is asserting a preferential claim by reason of prior settlement, as to the lands outside of the particular legal subdivision or subdivisions upon which the improvements of the latter are situated, unless the exterior boundaries of the asserted settlement claim had been plainly marked. 48–451

515. Under section 8 of the act of December 29, 1916, equitable division of designated lands between two or more applicants entitled to preferential rights to make additional entries is not limited to an equal division of the subdivisions in conflict, but all the tracts applied for contiguous to the original entry of either of the parties must be taken into consideration. 48–23

516. In making equitable division between two or more applicants entitled to preferential rights under section 8 of the act of December 29, 1916, the area of incontiguous tracts applied for by either party is not to be computed. 48–23

517. Where one of two claimants for the same tract of land applies to make an additional entry of land contiguous to his patented entry, under section 5 of the act of December 29, 1916, and asserts a preference right under section 8 of that act, he must show that he owned and resided upon the patented lands at the time that he applied to make the additional entry and that he was qualified to make entry during the preference right period. 48–24

518. The exercise of the preferential right privilege under section 8 of the act of December 29, 1916, is limited thereby to lands contiguous to the original entry and can not be extended to include lands contiguous to an additional entry which does not adjoin the original entry. 48–32

519. The terms "former entry" and "existing entry," as used in the proviso to section 3, and in section 4, respectively, of the stock-raising homestead act, mean an original or first entry, and not merely a prior entry. 48–32

520. One who has made an additional entry under either section 4 or section 5 of the act is qualified to make an additional entry for such a quantity of designated land within 20 miles of the original entry as, when added to the area formerly acquired, will not exceed approximately 640 acres. 48–39

521. An original entry the controlling area of which can be irrigated is not to be designated under the stock-raising homestead laws, nor used as a basis for an additional entry. 48–104

522. When an issue is raised between rival applicants, either of them is entitled to a hearing for the purpose of showing that his adversary secured the designation necessary to his entry by making a false or fraudulent representation as to the character of the land. 48–104

523. The act of July 28, 1917, allowing credit for military service, does not excuse either the placing of a habitable house upon an entry made under the act of June 6, 1912, or under the act of February 19, 1909, or the required permanent improvements upon a stock-raising homestead entry. 48–107

524. An entry under section 6 of the act of March 2, 1889, is to all intents and purposes an original entry within the meaning of section 4 of the stock-raising homestead act, and is a proper

basis for the assertion of a preferential right under section 8 of the latter act. 48–118

525. A preference right based upon an application to enter, and petition for designation filed under the stock-raising homestead act is forfeited upon the execution of a relinquishment prior to designation of the land, and said right will not inure to the benefit of one procuring such relinquishment as against a claimant, asserting a preference right as the holder of adjacent land, who had his application of record prior to designation. 48–137

526. A stock-raising homestead entryman is entitled, by virtue of the provisions of the act of July 28, 1917, to have his military service construed as equivalent to the establishment of residence *eo instanti* as of the date of the designation of the land where, after the filing of his application, he entered the service and remained therein until after the land was designated. 48–179

527. The terms "own" and "owned," as used in sections 5 and 8 of the stock-raising homestead act of December 29, 1916, are to be construed as meaning an absolute ownership; that is, a complete dominion over the property, and not merely an undivided interest therein. 48–270

528. An undivided interest in a patented original homestead entry does not constitute such an ownership thereof as will afford a valid basis upon which to predicate a claim of preference right under section 8 of the act of December 29, 1916, to make an additional entry of contiguous lands under section 5 of that act. 48–271

529. Credit for residence maintained or improvements made prior to designation upon lands entered under the stock-raising homestead act of December 29, 1916, can not be allowed as partial fulfillment of the statutory requirements of that act, and final proof in support of such an entry must be rejected as premature if submitted before the lapse of three years from the date of the effective designation of the lands. 48–289

530. Congress clearly intended by the language which it used in sections 1, 2, and 3 of the stock-raising homestead act of December 29, 1916, that no right whatever should be acquired thereunder by, or credit allowed for, occupancy of land, or consideration given to improvements made thereupon, prior to its designation. 48–293

531. The rule based upon the provision of the act of May 14, 1880, that the right of a homesteader shall relate back to the date of settlement, whereunder an entryman, on submission of final proof, is given credit for the entire period of his occupancy regardless of the date of his entry, is not applicable to stock-raising homestead entries. 48–294

532. An applicant who has applied to enter and have designated lands under the stock-raising homestead act acquires a right of entry, when the land is designated, superior to that of a subsequent applicant under the enlarged homestead act, who is asserting a preferential claim by reason of prior settlement, as to the lands, outside of the particular legal subdivision or subdivisions upon which the improvements of the latter are situated, unless the exterior boundaries of the asserted settlement claim had been plainly marked. 48–451

533. An applicant under the stock-raising homestead act of December 29, 1916, does not acquire a preference right of entry before designation of the land, either by reason of his prior settlement or by purchase of the possessory rights and improvements of another who had previously made settlement thereupon. 48–451

534. One who having made an entry under the stock-raising homestead act as additional to an original entry, applies to have the former entry changed to an original entry under that act for the purpose of including incontiguous tracts, must show that he is not the owner of more than 160

acres of land in the United States, acquired under other than the homestead law. 48–579

535. A stock-raising homestead entry made as additional to an original homestead entry that was previously perfected and sold, while in all respects an original entry as to the requirements of residence, yet being governed by the first proviso to section 3 of the stock-raising homestead act, it can not be enlarged by the addition of incontiguous tracts. 48–579

536. The stock-raising homestead act does not require one who makes an entry thereunder as additional to an original entry, to show that he was not the owner of more than 160 acres of land in the United States, acquired under other than the homestead law. 48–579

537. In fulfilling the one year minimum residence requirement under the act of July 28, 1917, a soldier is entitled to the same absence privilege as is enjoyed by other entrymen under the general homestead laws, and the period of absence from a stock-raising homestead entry under authority of the so-called drought act of July 24, 1919, may be credited in making up the aggregate of one year required by law. 48–125

538. An application for an additional entry under the stock-raising homestead act, which can not be allowed because the lands applied for are more than 20 miles distant from the original entry, confers no right upon the applicant to have it treated as an application for an original entry, if his only remaining unexhausted homestead right was that of making an additional entry under that act. 49–137

539. Sections 1 and 3 of the stock-raising homestead act are to be construed so as to harmonize with the interpretation given to sections 4 and 5 thereof, as amended by the act of September 29, 1919, and, when so construed, it is obvious that two or more incontiguous tracts of designated land within a radius of 20 miles may be included in an original or an additional entry, but the lands entered must be in a reasonably compact form. 49–191

540. The purpose of section 8 of the stock-raising homestead act was to confer upon those who occupy their homesteads a preference right to contiguous land, regardless of whether patent had or had not issued, and it becomes necessary to look to sections 4 and 5 of the act to determine the nature of the occupation required. 49–245

541. The terms "existing entry" and "original entry," as used in section 4 of the stock-raising homestead act, mean one and the same thing; that is, an entry upon which final proof has not been submitted. 49–245

542. One asserting the right to make an original entry under section 1 of the stock-raising homestead act because qualified to make an additional entry under section 2 of the Kinkaid Act by reason of having made an entry in the so-called Kinkaid territory prior to May 29, 1908, which he still owns and occupies, or because qualified to make an additional entry under section 7 of the enlarged homestead acts or under section 6 of the act of March 2, 1889, must show that he is not the proprietor of more than 160 acres of land in the United States, acquired under other than the homestead laws. 49–308

543. The status of land at the time its designation under the stock-raising homestead act becomes effective is the test of the right of an applicant to make entry thereof under that act and, if, prior to that time, the land is found to be within the known geologic structure of a producing oil field, it is not subject to any form of entry. 49–310

544. The departmental instructions of October 6, 1920, directing the rejection of all applications to enter, file upon, or select under nonmineral land laws, lands which have been or shall

be designated as within the known geologic structure of a producing oil or gas field, extend to lands not so designated, but which are embraced within a lease granted under the act of February 25, 1920, until it shall be determined what portion of the surface will be needed in carrying out the terms of the lease. 49–312

545. When land is designated as of the character contemplated by the stock-raising homestead act upon a petition accompanying an application to make entry thereof, the application assumes, in the absence of an intervening withdrawal, the status of an entry and the rights of the applicant relate back to the date of the filing of the application, despite the fact that the act itself precludes occupancy of the land prior to the time that the designation becomes effective. 49–374

546. The Land Department has no authority to reject a pending and complete stock-raising homestead application on account of a withdrawal which attaches after the designation of the land under the stock-raising homestead act becomes effective. 51–138

547. The proviso to section 2 of the stock-raising homestead act confers a preference right of entry upon an applicant pursuant to whose accompanying petition the land applied for is designated as subject to the provisions of that act, and the fact that the allowance of the application is contingent upon the designation of the land will not permit the initiation of an intervening adverse claim to defeat the right. 49–405

548. The preference right accorded by section 8 of the stock-raising homestead act to one asserting through the holding or ownership of contiguous land is defeated by the preference right granted to a petitioner for the designation of the land under section 2 of that act, where the former's application to make original entry, although filed prior to the latter's petition, was not and could not have been allowed until subsequent thereto. 49–440

549. One who has made an entry for the full area permitted by the stock-raising homestead act is thereafter debarred from making a timber and stone entry, or any other form of entry under the agricultural land laws. 49–527

550. A suspended application to make a stock-raising homestead entry for lands not subject to entry at the time of filing, but which becomes allowable prior to the placing of record of an original entry by another, confers a right upon the applicant to enter the lands applied for superior to the preference right to make an additional stock-raising entry for adjoining lands accorded by section 8 of the act of December 29, 1916. 49–649

551. One who has made an additional entry under section 5 of the stock-raising homestead act is not qualified either to make a further additional entry under that act or to enlarge the additional entry by amendment, if he does not own and reside upon his original entry. 49–650

552. One who files an application under the enlarged homestead act or the stock-raising homestead act for a tract of undesignated land can not be charged with claiming the land therein described until the date the application is allowable after the designation of the land becomes effective. 50–3

553. Section 9 of the act of December 29, 1916, reserves to the United States the mineral deposits in lands entered as stock-raising homesteads, and the filing of an application to make entry of lands, subject to entry under that act, confers upon the applicant a prior right to the surface that is not subject to contest by a mineral claimant who bases his right upon discovery made after the filing of the homestead application. 50–17

554. While ordinarily the department will not inquire whether an applicant under section 4 of the stock-

raising homestead act has complied with the law in connection with his original entry, yet an exception will be made in favor of a conflicting applicant who has placed valuable improvements upon the land and made allegations which, if sustained at the hearing, warrant cancellation thereof. 50–136

555. Where an additional entry, made under the stock-raising homestead act of December 29, 1916, is governed by the provisions of section 4 thereof, and acceptable final proof has been submitted on the original entry, the entryman will only be required to show at time of submission of final proof on the additional entry the presence of permanent improvements, tending to increase the value of the land for stock-raising purposes, of the value of not less than $1.25 per acre. 50–137

556. An entry under the stock-raising homestead act predicated upon a settlement on land within a school section will be allowed where the settlement was made and the designation of the land under that act became effective prior to the completion of the survey in the field and no protest is entered by the State against the allowance of the entry. 50–591

557. The Secretary of the Interior may, in the exercise of his supervisory authority, permit a stock-raising homestead entry to be amended so as to embrace land wholly different from that originally entered, where it is satisfactorily shown that, through no fault of the entryman, the land is so far unfit for occupancy as to render it practically impossible to comply with the law relating thereto. 50–597

558. Failure to comply with the provision in the third proviso to section 3 of the stock-raising homestead act, specifying that at least one-half of the required improvements shall be placed upon the entry within three years from the making thereof, while a sufficient ground of contest, yet, in and of itself, will not be held such a default that the department must upon its own initiative cancel the entry. 50–613

559. The provision in section 3 of the stock-raising homestead act that one-half of the required improvements be placed upon the land within three years from the date of the entry is merely directory, not mandatory, and failure strictly to comply therewith does not preclude the Land Department from refusing to cancel the entry upon contest proceedings where the entryman has been in good faith in his endeavor to comply with the law. 51–492

560. Where at the time of submission of final proof upon a stock-raising homestead entry improvements to the extent of $1.25 per acre had not been placed upon the land, and ample time remained within the statutory life of the entry to make the required improvements, withdrawal of the proof may be allowed and the entry permitted to remain intact, subject to the submission of new proof, at the proper time. 50–613

561. The term "final proof" as used in sections 4 and 5 of the stock-raising homestead act contemplates a final proof which is complete and entitles the entryman to a final certificate and patent. 51–452

562. One who has filed a complete application to make a homestead entry which is held suspended pending a segregation survey, is entitled to make an additional stock-raising homestead entry. 50–633

563. While an agent, transferee, or encumbrancer is not permitted to perform any provision of the homestead law which is required to be the personal act of the entryman himself, yet a transferee or incumbrancer may, in the event that the debtor defaults, submit evidence probative of the fact that the entryman had personally fulfilled the requirements of the statute. 50–645

564. Where a stock-raising homestead entryman, after mortgaging the

entry, defaults without submitting final proof, although requested to do so, and the proof offered by the mortgagee is found to be unsatisfactory because of insufficiency of improvements, the latter may, upon a satisfactory showing that the former had met the legal requirements of the statute with respect to improvements, but had stripped the land with the apparent intention of defeating the just claims of the mortgagee, be permitted to restore in value the improvements thus removed and to submit new proof. 50–645

565. Lands which contain 25,000 feet, or more, of saw timber, or its equivalent, to each 40-acre tract, are lands containing merchantable timber within the meaning of the stock-raising homestead act and should be excluded from designation thereunder. 51–395

566. Where there is no vacant public land of the character contemplated by the stock-raising homestead act contiguous to a patented entry, one owning and residing upon such an entry may initiate a settlement claim under that act on unsurveyed land within 20 miles without establishing residence thereon, provided that the unsurveyed land has been designated as stock-raising and the land in the patented entry is of the same character. 51–61

567. Actual possession of a lode mining claim by one who has made no discovery and is not in diligent prosecution of work leading to discovery is no bar to the allowance of a stock-raising homestead entry which includes the part of the subdivision upon which the mining claim is located where forceable intrusion upon such possession is not necessary in order to initiate the right. 51–258

XVIII. Indian Homesteads

See INDIAN LANDS.

568. Instructions of January 15, 1921. 47–613

569. The disqualification under the homestead law arising from the ownership of land is determined as of the date of entry; and an Indian entitled under section 6 of the act of February 8, 1887, to make homestead entry as a citizen of the United States, is not disqualified to make such entry by reason of the fact that he has a right *in futuro* to an allotment of 320 acres of Indian land. 43–471

570. The act of July 4, 1884, extended the period of limitation on alienation under a trust patent issued upon an Indian homestead from five years, as fixed by the act of March 3, 1875, to 25 years; and an entryman under the act of 1875 who had not fully complied with all the requirements essential to perfect his title under that act prior to the passage of the act of 1884, may complete his entry and receive patent under the provisions of the later act. 43–95

571. The trust period prescribed in trust patents issued on Indian homesteads under the act of July 4, 1884, runs from the date of issuance of such patent. 47–574

572. Indian homesteads and Indian allotments are in all essential respects upon the same footing, and are equally within the purview of the act of June 21, 1906, which affords authority for the extension of the trust period in the matter of trust patents issued thereon. 47–574

HOSPITALIZATION

See MILITARY SERVICE.

HUSBAND AND WIFE

See HOMESTEAD, III, IV, V.

HUNTLEY IRRIGATION PROJECT

See SURVEY, 45–646.

IDAHO, STATE OF

See HOMESTEAD, 47–29.

1. No rights accrued to the State of Idaho by virtue of the unauthorized selections of the State land board until such selections were ratified and

confirmed by act of the State legislature of February 8, 1911; but such ratification had no retroactive effect to impair the rights of *bona fide* settlers whose claims had attached long prior thereto. 43–168

IMPERIAL VALLEY LANDS

See DESERT LANDS, 45–50, 599.

1. Circular of July 29, 1914, under act of May 2, 1914, concerning lieu selections of Imperial Valley lands. 43–351

2. Circular of May 13, 1916, under act of March 3, 1909, providing for the sale of isolated tracts or lots in Imperial Valley, Calif. 45–88

3. The act of March 28, 1908, prohibiting desert-land entries on unsurveyed lands, has no application to the lands in Imperial Valley, Calif., authorized to be resurveyed by the act of July 1, 1902. 41–257

4. The act of March 3, 1909, providing for the sale of isolated tracts of public lands in Imperial Valley, has no application to lands which were, at the date of the passage of that act, included in a *bona fide* claim under the public land laws. 42–545

5. Desert-land entrymen in southern California who in good faith made their entries relying upon what is known as the Imperial System for water to irrigate their lands, but who have been unable to effect reclamation because of delay in completion of that system, are held to be within the terms and purview of the acts of March 28, 1908, and April 30, 1912, and entitled to the extensions of time authorized by those acts, notwithstanding they may have no direct interest, by purchase of stock, in the local company by which said system operates. 42–569

6. The act of March 28, 1908, according a preference right to make desert-land entry, after survey, to one who has taken possession of and reclaimed or commenced to reclaim a tract of unsurveyed desert land, has no application whatever to lands in the Imperial Valley, authorized to be resurveyed by the act of July 1, 1902, inasmuch as such lands were surveyed in 1856, although given by the Land Department for administrative purposes the status of unsurveyed lands pending their resurvey under said act of 1902. 43–592

7. The act of March 3, 1909, providing for the sale of isolated tracts in Imperial County, Calif., contemplates narrow strips, 10 chains or less in width, lying between appropriated areas and not a part thereof, and has no application to contiguous lots, even though less than 10 chains in width, where they together form one compact area aggregating approximately 160 acres. 44–75

IMPROVEMENTS

See MINING CLAIM, 49–432, 508; MORTGAGE, 48–582, 637.

1. No expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry; and expenditures once credited can not be again applied. 41–601

2. A desert-land entryman is not entitled, in making annual proof, to credit for improvements placed upon the land by a former entryman. 41–601

3. Abandoned cabins, houses, clearing, or other improvements of settlers who once occupied public land and afterwards left it, can not be considered such possession or occupancy as will exclude the land from forest lieu selection under the act of June 4, 1897. 41–647

INCONTIGUOUS TRACTS

See HOMESTEAD, 47–197; SETTLEMENT, 41–375.

INDEMNITY

See BURDEN OF PROOF, 49–449; INDIAN LANDS, 45–17; RAILROAD GRANT; RAILROAD LANDS; REPAYMENT, 51–495.

1. A State indemnity selection, canceled upon the default of the selector

after due notice to answer the charge that the land is mineral in character, will not be reinstated for the purpose of ordering a hearing in the presence of an adverse claim, even though such claim was inadvertently allowed. 50–20

2. Congress in providing in section 29 of the act of June 20, 1910, that indemnity school selections by the State of Arizona should be made subject to the approval of the Secretary of the Interior, who is charged with the duty of determining the character of public lands, intended that such approval should constitute a finding that the lands were of a character which made them subject to selection under the act and be equivalent to a patent, thus depriving the Land Department of further jurisdiction thereover, even though the determination as to the character of the land was erroneous. After such approval the provision of section 2449, Revised Statutes, that the question of mineral character shall remain open, is inapplicable. 50–528

3. A State may select, subject to the reservations contained in the acts of June 22, 1910, April 30, 1912, and July 17, 1914, lands in designated school sections as indemnity for losses to the grant suffered on account of the mineral character of those sections, and it is immaterial whether the section selected or some other designated section lost to the grant be used as basis for the selection. 50–668

INDIAN LANDS

See ALASKA LANDS, 43–88, 272; 48–70; 49–592; COAL LANDS, 49–354; EXCHANGE OF LANDS; HOMESTEAD, XVIII; MILITARY SERVICE, 46–239, 343; MINERAL LAND, 45–537, 539, 540; OIL, GAS, ETC., LANDS, 49–139, 431; 50–238; 51–91, 313; OKLAHOMA LANDS, 42–504; PATENT, 50–676; 51–91, 170; POWER SITES, 42–4, 348; REPAYMENT, 44–3; 45–530; 46–282, 375; 48–14; 49–479; RESERVATION; RIGHT OF WAY, 44–471; 50–569; SCHOOL LANDS, 46–396; 48–512; 49–314, 377; TURTLE MOUNTAIN INDIANS, 46–14.

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51. Instructions of January 23, 1920; payments for Fort Peck lands. (Circular No. 667.) 47–335

52. Regulations of February 27, 1920; sale of Cheyenne River and Standing Rock lands. (Circular No. 670.) 47–340

53. Instructions of May 26, 1920; payments for Colville lands. (Circular No. 698.) 47–400

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69. Instructions of July 1, 1924, disposal of public lands in the Columbia

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70. Instructions of July 5, 1924, extension of time for payments by purchasers and entrymen of lands within the former Crow Indian Reservation, Mont. (Circular No. 948.) 50–573

71. Instructions of March 3, 1911 (39 L. D. 540), under the act of February 16, 1911, modified in so far as they fixed dates subsequent to the date of the act for the allowance of settlements and entries upon the lands thereby opened to disposal. 41–78

72. By use of the word "hereafter" in the act of February 16, 1911, providing for the disposal of the undisposed of Red Lake Indian lands, Minnesota, Congress intended that such lands should be open to entry immediately upon approval of that act. 41–78

73. The filing of a selection under the act of April 21, 1904, authorizing the selection of public lands in exchange for lands in Indian reservations, constitutes an appropriation of the lands within the meaning of the act of June 20, 1910, making an additional grant of school lands to Arizona, and said latter act therefore furnishes no obstacle to the consummation of such selection pending at the date of its passage. 41–96

74. Where by mistake in description a tract of land not intended to be taken was included in a homestead entry of Rosebud Indian lands, opened to disposition by the act of March 2, 1907, and the entry was later amended by elimination of such tract, such erroneous entry will not be considered as fixing the price of the eliminated tract, so far as a subsequent entryman thereof is concerned; and in determining the price to be charged a subsequent entryman, under the graduated scale provided by said act of March 2, 1907, the period during which the land was erroneously embraced in the first entry should be eliminated from calculation and not considered, and the price fixed by adding together the period between the date of opening and the date of the first entry and the period between the date of the cancellation of that entry as to the tract in question and the date of the later entry. 41–127

75. The act of March 4, 1911, providing for the issuance of patent upon homestead entries within the former Siletz Indian Reservation where the entryman had built a house on the land and actually entered into occupation thereof and cultivated a portion of the land for the period required by law, is a remedial act intended to relieve *bona fide* claimants from the rigid requirement of actual residence for the period of three years contained in the act of August 15, 1894, but does not wholly dispense with residence; and one claiming the benefit of the act of 1911 must show efforts to comply with the provisions of the act of 1894, respecting residence and cultivation, evidencing *bona fide* intent to make it his home and develop it as a farm. 41–309

76. A homestead entry made under the act of April 23, 1904, as amended by the act of May 29, 1908, providing for entry of lands within the Flathead irrigation project in the former Flathead Indian Reservation, may be commuted under section 2301, Revised Statutes, upon payment of the appraised price of the land; but as an entryman under said acts is required, in addition to compliance with the general homestead laws, to reclaim at least one-half of the total irrigable area of his entry for agricultural purposes and to pay the water-right charges apportioned against the tract, final certificate should not issue until the land has been reclaimed and the charges apportioned and paid in accordance with the provisions of said acts. 41–521

77. The price of Rosebud Indian lands opened to disposition under the act of March 2, 1907, was, under the regulations of January 12, 1909, $6 per acre for all lands entered during the

first period fixed by said regulations, $4.50 for lands entered during the second period, and $2.50 thereafter. Where by mistake in description a tract not intended to be taken was included in a homestead entry made during the first period and the entry was, before the expiration of that period, amended by elimination of such tract, such erroneous entry will not be considered as fixing the price of the eliminated tract so far as a subsequent entryman is concerned; and the tract having remained open to entry by anyone desiring to take it during the remainder of the first period and during all of the second period, without anyone making entry thereof, the price to be charged an entryman thereafter should be at the then existing rate of $2.50. 41–637

78. The provision in section 3 of the act of May 29, 1908, that the surplus unallotted agricultural lands in the former Spokane Indian Reservation remaining undisposed of at the expiration of four years from the opening of said lands to entry shall be appraised and sold at public auction under sealed bids to the highest bidder for cash at not less than their appraised value, is mandatory; and there is no authority of law for disposing of any of said lands as isolated tracts under the act of June 27, 1906. 42–12

79. The word "purchaser" as employed in the proviso to the first paragraph of section 5 of the act of June 6, 1900, providing that no purchaser of Fort Hall Indian lands by that section opened to settlement and entry should be permitted to purchase more than 160 acres of the land thereinbefore referred to, applies only to entrymen under the homestead, town site, timber and stone, and mining laws of the United States, and has no application to a purchaser of lands sold at public auction under the second proviso to the last paragraph of said section 5; and lands purchased under said second proviso to the last paragraph of said section 5 should not be taken into consideration in determining the qualifications of one making entry under the supplemental act of March 30, 1904. 42–153

80. The act of March 4, 1911, for the relief of homestead entrymen of Siletz Indian lands, was intended to validate all claims, not falling within the exceptions specified in the act, where there had been actual occupation, however short and intermittent, and where the entryman had actually cultivated a portion of the land for the period required by law. 42–244

81. The provision in the act of March 4, 1911, which precludes reinstatement of an entry where another "entry is of record covering such land," contemplates a valid pending entry. 42–244

82. The act of June 25, 1910, confers upon the Secretary of the Interior exclusive jurisdiction to ascertain and determine who are lawful heirs to Indian trust estates, and he is not bound by decisions or decrees of any court in inheritance proceedings affecting Indian trust lands. 42–493

83. The instructions of July 19, 1913, concerning the reinstatement of homestead entries of Siletz Indian lands under the act of March 4, 1911, established a more liberal rule respecting occupation and cultivation, but did not contemplate any further action, in the absence of specific instructions from the Secretary, in cases closed under the rules, where reinstatement under that act was denied because of a valid intervening entry of record. 43–64

84. The Executive order of July 2, 1872, establishing the Colville Indian Reservation and designating the Columbia River as the east and south boundaries thereof, contemplates that the reservation shall extend to the middle of the channel of the river; and all islands lying between the middle of the channel of the river and the mainland of the diminished reservation are part of the reservation and not subject to disposal under the public land laws. 43–267

85. After finding that reinstatement of a homestead entry within the former Siletz Indian Reservation, under the act of March 4, 1911, is barred by an intervening adverse homestead application, and the case is disposed of on that ground, the Land Department declines to make any further finding respecting alleged occupation, cultivation, and improvement of the land. 43–454

86. Lands in the Nez Perce Indian Reservation are not subject to designation under the enlarged homestead act. 43–508

87. By section 17 of the act of June 30, 1913, the unused, unallotted, and unreserved lands in the former Kiowa, Comanche, Apache, and Wichita Reservations were declared subject to sale, in the discretion of the Secretary of the Interior, with a view to providing funds for the Kiowa Agency hospital, and from and after that date none of said lands was subject to homestead entry or any form of disposition other than as authorized by that act. 43–531

88. Sections 13 and 14 of the act of June 25, 1910, authorizing the Secretary of the Interior to reserve power and reservoir sites within Indian reservations, has no application to lands outside of Indian reservations. 42–4

89. A homestead entry of record at the date of the filing of an application for reinstatement under the act of March 4, 1911, providing for the relief of homestead entrymen of Siletz Indian lands, is a bar to such reinstatement; and a pending application to make homestead entry, based upon settlement, suspended to await determination of a conflicting entry of record, is in like manner a bar to reinstatement under that act. 43–61

90. Congress having by the act of April 27, 1904, provided a complete system for the disposition of the ceded portion of the Crow Indian Reservation, and specifically declared that the lands opened to entry under that act shall be disposed of under the homestead, town site, and mining laws, such lands are not subject to sale as isolated tracts under section 2455, Revised Statutes, as amended. 43–181

91. A railroad company is not entitled to select lieu lands under the act of March 4, 1913, nor the Land Department authorized to issue patent for land designated as desired by the company in lieu of land proposed to be relinquished or reconveyed by it, prior to the execution and filing of a relinquishment or reconveyance by the company as required by said act; but the company and the department may enter into an arrangement for the simultaneous delivery of a deed or relinquishment by the company for the land occupied by an Indian and of a patent by the Land Department for the land selected in lieu thereof. 43–284

92. The Land Department is without authority to extend the time fixed by section 8 of the act of May 30, 1908, for payment of the deferred installments on entries of Fort Peck Indian lands made under the provisions of that act. 44–501

93. One who made homestead entry of Shoshone or Wind River Indian lands under the act of March 3, 1905, and abandoned the same after making part payment of the Indian price therefor, is not entitled, upon making second entry under that act, to credit for the installments paid on the first entry. 44–570

94. Where lands within the former Crow Indian Reservation were sold under the act of April 27, 1904, as nonmineral, and subsequently, before final payment of the purchase price, were classified as coal, absolute patent therefor will issue to the purchaser, upon completion of the payments, notwithstanding such classification. 44–121

95. Where all right to the annual installments of purchase price paid on an entry of irrigable lands within the Yuma or Colorado River Indian Reservation, made under section

25 of the act of April 21, 1904, is assigned and the entry relinquished, the assignee, upon making entry of the land, is entitled to credit for such installments. 44–393

96. Lands in that portion of the Fort Berthold Indian Reservation opened to entry by the President's proclamation of May 20, 1891, under the provisions of section 25 of the act of March 3, 1891, which provides that such lands shall be disposed of to actual settlers only under the homestead laws, are not subject to sale as isolated tracts under the act of March 28, 1912, amending section 2455, Revised Statutes. 44–354

97. Lands within the ceded portion of the Flathead Indian Reservation classified as of equal value for the timber thereon and for grazing purposes are not timber lands within the meaning of the act of April 23, 1904, which declares that "lands more valuable for timber than for any other purpose" shall be classified as timber lands. 44–28

98. The grant of swamp and overflowed lands made to the State of Oregon by the act of March 12, 1860, extends to and embraces swamp and overflowed lands lying outside of the diminished Klamath Indian Reservation which at the date of the grant were in the possession and occupancy of said Indians but which by the treaty of October 14, 1864, were ceded to the United States. 44–123

99. Under the provision in the act of March 4, 1913, that selections in lieu of lands occupied by Indians, relinquished or reconveyed under that act, must be made "within a period of three years after the approval of this act," it is sufficient if the selections, accompanied by proper relinquishment or reconveyance, be made within the time specified, notwithstanding examination of the land and approval of the selections is not made until after the expiration of that period. 44–509

100. No amendment operating as a new selection can be allowed after the expiration of the three-year period mentioned; and as to amendments after that time going only to matters of form, or which fall within the purview of section 2372, Revised Statutes, as amended, each case will be considered and dealt with on the particular facts presented. 44–509

101. The provision in the act of April 23, 1904, that upon the cancellation of trust patents on Indian allotments under that act by the Secretary of the Interior, "such lands shall not be open to settlement for 60 days after the cancellation," has no application where the patent is canceled upon voluntary relinquishment by the allottee, the lands in such case becoming subject to appropriation without awaiting the expiration of 60 days from the date of cancellation. 44–143

102. The act of March 3, 1911, declaring the lands within the ceded portion of the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Indian Reservation to be part of the public domain and open to the operation of laws regulating the entry, sale, or disposal of the same, and that no patent should be denied to entries of such lands theretofore made in good faith under any of the laws regulating the entry, sale, or disposal of public lands, did not operate to validate railroad indemnity selections theretofore presented and properly rejected, but pending on appeal at the date of the act, as against adverse claims. 44–78

103. Where idemnity selection lists by the Northern Pacific Railway Co. for lands within the ceded portion of the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Indian Reservation, restored to the public domain and opened to certain classes of entries by the act of May 1, 1888, were rejected on the ground that such lands were not subject to selection by the company as indemnity, and during the pendency of an appeal by the company from such action the act of March 3,

1911, was passed, declaring such lands a part of the public domain and "open to the operation of laws regulating the entry, sale, or disposal of the same," and the company thereafter filed supplemental lists for the lands theretofore selected, tendering the necessary fees and receiving receipt therefor, the rights of the company thereunder are superior to any rights acquired by the subsequent tender of a homestead application not based upon settlement prior to the filing of the supplemental lists. 45–17

104. Where indemnity selection lists by the Northern Pacific Railway Co. for lands within the ceded portion of the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Indian Reservation, restored to the public domain and opened to certain classes of entries by the act of May 1, 1888, were rejected on the ground that such lands were not subject to selection by the company as indemnity, and during the pendency of an appeal by the company from such action the act of March 3, 1911, was passed, declaring such lands a part of the public domain and "open to the operation of laws regulating the entry, sale, or disposal of the same," and the company thereafter, pursuant to instructions of September 30, 1913, from the General Land Office, filed supplemental lists for the lands theretofore selected, tendering the necessary fees and receiving receipt therefor, the rights of the company thereunder are superior to any rights acquired by settlement or the filing of a homestead application subsequent to the date of receipt of the instructions of September 30, 1913, by the local officers, although prior to the filing of the supplemental lists. 45–193

105. The provision in section 3 of the act of February 20, 1904, authorizing the sale of the ceded Red Lake Indian lands remaining unsold at the expiration of five years from the date of the first sale under that act without any conditions except the payment of the purchase price, was repealed by the act of February 16, 1911, after which date said lands were subject to appropriation only by homestead entry and the payment of the purchase price as provided by said latter act. 45–456

106. Lands within the former Red Lake Indian Reservation in Minnesota opened to entry under the act of February 16, 1911, are subject to disposal under the provisions of the act of May 20, 1908. 46–442

107. One who has exhausted his homestead right is not thereafter qualified to make a second homestead entry for land within the former Red Lake Indian Reservation under the provisions of the act of February 16, 1911, the act of February 20, 1904, which allowed such privillege having expired by limitation. 46–442

108. A decision of the Secretary of the Interior construing the provisions of section 5 of the act of Congress of April 27, 1904 (33 Stat. L. 352, ch. 1624), for the disposal of lands ceded by the Indians of the Crow Reservation in Montana, to the effect that the provisions of the homestead laws with respect to residence and cultivation are applicable to an entry of such lands, is within the discretionary powers of the Secretary, and a cancellation of the entry in accordance therewith will not be prevented by an injunction. 46–457

109. The intention of Congress to make the provisions of the homestead law applicable to homestead entries under the act of April 27, 1904, of lands ceded by the Crow Indians in Montana, is not disproved by the act of February 20, 1917 (39 Stat. L. 926, ch. 101), which provides that any person "who has heretofore entered under the homestead laws, and paid a price equivalent to or greater than $4 per acre, lands embraced in a ceded Indian reservation, shall, upon proof of such fact, if otherwise qualified, be entitled to the benefits of the homestead law as though such former entry had not been made." 46–457

110. The act of July 17, 1914, providing for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals, has no application to lands within the former Kiowa, Comanche, Apache, and Wichita Reservations, which have been at all times, since opened to entry, subject to disposition exclusively under nonmineral laws. 47–331

111. The Indian title to the area in the State of Colorado formerly occupied by the Uncompahgre and White River Utes being extinguished, and Congress, in declaring same to be subject to disposition under the public land laws, having made no exception that would preclude appropriate disposition under laws applicable to other tracts of like character, such lands and deposits therein are subject to the provisions of the leasing act of February 25, 1920, notwithstanding the fact that under the terms of agreement the Indians would be entitled to the proceeds from disposition thereof. 47–560

112. Section 29 of the act of June 25, 1910, authorizing the Secretary of the Interior to classify and appraise the vacant, unalloted, and unreserved lands in the former Flathead Indian Reservation, not theretofore classified and appraised, did not contemplate that there should be any departure from the classification and appraisals of lands of the same class, previously made by the commission appointed under authority of the act of April 23, 1904. 48–59

113. One who, prior to restoration, settled upon unclassified and unappraised lands of the former Flathead Indian Reservation at the invitation of the Government and with the assurance of the local land officials that he would not be required to pay more than the price charged others for appraised lands of the same class, is entitled to enter them at the price fixed for lands of like character by the original commission, notwithstanding that another commission had subsequently appraised them at a higher price. 48–60

114. Congress, when it provided in section 2 of the act of August 3, 1914, that the surplus coal lands in that portion of the Fort Berthold Indian Reservation, N. Dak., which was opened to disposition by the act of June 1, 1910, should be "subject to disposal by the United States in accordance with the coal land laws in force at the time of such disposal" and specified how the proceeds from their disposal, or from the "leasing" thereof, should be deposited, had in definite contemplation, that the coal land laws then in force might be, or would be superseded by a leasing law; consequently, the general leasing act of February 25, 1920, upon its enactment, became operative as to the undisposed of surplus coal lands therein. 48–448

115. An entryman whose invalid homestead entry for ceded Cheyenne River Indian lands was validated by the act of January 27, 1921, is not relieved by that act, either expressly or by implication, from payment of the unpaid installments of the purchase price, in the form and manner specified in the act of May 29, 1908, as subsequently amended, under which the entry was made. 48–453

116. Congress intended by the act of April 23, 1904, to impress a trust upon the proceeds derived from the sale of unallotted lands in the Flathead Indian Reservation, Mont., and the general provisions contained in the sundry civil act of July 19, 1919, directing that the proceeds derived from a lease of lands withdrawn under the reclamation law shall be covered into the reclamation fund, has no application to moneys derived from the leasing of lands for agricultural and grazing purposes in that reservation withdrawn as power and reservoir sites under authority of section 22 of the act of March 3, 1909. 48–468

117. The irrigation systems on the Flathead Indian Reservation, Mont.,

do not constitute a "reclamation project," as contemplated by the reclamation act, and consequently neither section 3 of the act of August 13, 1914, the Indian appropriation act of February 14, 1920, nor any other act of Congress authorizes the Secretary of the Interior to impose a money penalty or obligation to pay interest upon landowners in that reservation who fail to pay the stated charges as and when due. 48–475

118. The irrigation systems on the Flathead Indian Reservation, Mont., constructed under the act of April 23, 1904, do not constitute a "reclamation project" as contemplated by the reclamation act and amendments thereto, although a large part of the irrigable lands have passed from Indian ownership and the engineering work is performed by the Reclamation Service. 48–468

119. The provision contained in the sundry civil act of July 19, 1919, directing that the proceeds derived from a lease of lands withdrawn under the reclamation law shall be covered into the reclamation fund, is to be regarded as relating primarily to "reclamation projects," and not to Indian irrigation projects, in the absence of a clear intent to include projects of the latter character. 48–468

120. State school lands within Indian irrigation projects should not be furnished with water in the absence of an agreement with the State to bear its proper part of the costs of the project. 51–613

121. On Indian irrigation projects where a specific lien for repayment of the irrigation charges is retained, such charges run as a covenant with the land until paid, even as against subsequent owners. 51–613

122. Where a lessee of Indian irrigation project lands obligates himself to pay the annual operation and maintenance charges accruing during the term of the lease, such charges become a part of the consideration for the lease, collectible from the lessee or from his bondsman, and payment can not be demanded from a subsequent lessee or purchaser of the same land. 51–614

123. Where land within an Indian irrigation project is sold under Government supervision as having a "paid-up water right," additional compensation can not be exacted from purchasers even in those cases where the irrigation costs were underestimated in the first instance. 51–614

124. Where no lien exists for repayment of irrigation charges, an Indian holding a patent in fee who sells his land to a white purchaser is liable for all charges accruing up to the time of sale and the purchaser for all charges accruing thereafter. 51–614

125. Where a legal liability to repay irrigation charges rests upon a landowner, Indian or white, delivery of water may be refused until payment is had, but where no such liability exists refusal to deliver water would not be justified. 51–614

126. The term "public lands" as used in the act of May 20, 1836, later embodied substantially in section 2448, Revised Statutes, declaring that where a patent is issued, in pursuance of any law of the United States, in the name of a deceased person, the title to the land designated therein shall inure to the heirs, devisees, or assignees of the patentee, is to be construed to include "Indian lands." 48–609

127. The title or ownership of the United States in lands within a reservation for Indian purposes, created by Executive order, not controlled by any treaty or act of Congress, is in no wise affected by the withdrawal, and such lands may be restored to the public domain by the President at any time within his discretion. 49–139

128. The general leasing act of February 25, 1920, did not, expressly or by implication, repeal or modify those provisions of the act of February 28, 1891, which relate to the leasing by allottees of lands within Indian reservations. 49–139

129. The provisions of the act of February 28, 1891, relating to the leasing by allottees of lands within Indian reservations, were applicable only to such reservations as those created by treaty or congressional action, and prior to the enactment of the act of February 25, 1920, no authority existed for the leasing of lands withdrawn from the public domain by Executive order for the use of the Indians. 49–139

130. Nothing contained in the terms of the act of February 25, 1920, authorizes that a construction shall be given to the term "Indian reservations," as used in paragraph 2 of the departmental regulations of March 11, 1920, so as to include therein lands merely withdrawn by Executive order for Indian purposes. 49–139

131. Lands withdrawn from the public domain by Executive order for the use of the Indians, are lands "owned by the United States," within the purview of that term as used in the act of February 25, 1920, and may be included within an oil and gas prospecting permit under section 13 thereof. 49–139

132. Lands within the Flathead Indian Reservation, Mont., classified as timber lands pursuant to the act of April 23, 1904, are specifically excepted by section 8 of that act from disposition under the mineral land laws, and nothing contained in other parts of the act or in any of the acts of Congress subsequently enacted, relating to the disposition of lands within that reservation, may be interpreted as importing a contrary intention. 49–166

133. The lands in that portion of the Fort Berthold Indian Reservation, N. Dak., which was opened to disposition by the act of June 1, 1910, are neither public lands nor ceded Indian lands, but are exclusively owned by the Indians, and consequently the coal deposits therein would not, except by virtue of the provisions of section 2 of the act of August 3, 1914, have been disposable under the general coal land laws or the leasing act of February 25, 1920. 49–354

134. The doctrine that congressional legislation pertaining to relations between the Indians and third parties, including the States, is to be given a liberal construction in favor of the Indians has been so frequently announced by the courts that it has practically become a maxim. 49–377

135. While the first proviso to section 26 of the act of June 30, 1919, declares that all rights under a mining claim within an Indian reservation shall be forfeited if the preference right accorded thereby to the locator is not exercised within one year from the date of location, yet such forfeiture does not, in the absence of an intervening adverse claim, preclude the locator from relocating the same ground, but in such event his rights under the act will commence with the date of the new location, and will be subject to compliance with all the terms, conditions, and regulations governing the original location. 49–420

136. The provisions of the acts of June 30, 1913, and March 3, 1919, which vested the Secretary of the Interior with the authority to dispose of the remaining unappropriated lands in the Kiowa, Comanche, and Apache Indian Reservations in Oklahoma, have no application to any unappropriated lands in the town sites within those reservations that were created pursuant to the act of March 20, 1906. 50–189

137. The status of the Indians and other "natives" of Alaska is similar to that of the American Indians within the territorial limits of the United States, and the extent of their interests in the public lands therein is merely that of use and occupancy, subject to such further grant of title as Congress from time to time may see fit to accord. 50–315

138. The tide or other lands in Alaska, occupied or reserved for the Indians or natives, can not be disposed of by them under existing law, but the

power rests with Congress, with or without their consent, to provide for the ultimate disposal of these lands. 50–315

139. Section 27 of the act of June 25, 1910, which provides for the sale of the pine timber on Chippewa Indian lands, does not require the collection of the appraised price of the timber on an entry more than once. 50–434

140. The act of June 7, 1897, does not entitle the children born of a marriage solemnized between a white man and an Indian woman to enrollment and to share in the distribution of tribal property, unless their mother had been recognized by the tribe as belonging thereto, and, in this respect, the act did not contemplate a forced recognition without the consent of the tribe. 50–551

141. The issuance of a lease conferring the right to mine all the metalliferous mineral deposits in a tract of land on the Fort Apache Indian Reservation, Ariz., pursuant to the act of June 30, 1919, as amended by the act of March 3, 1921, precludes the granting of a lease to another for the mining of any one or more of the minerals specified in those acts so long as the original lease is in effect. 50–672

142. Notwithstanding that the Indian appropriation act of March 3, 1909, authorized the issuance of unrestricted fee simple patents to religious organizations engaged in mission or school work on Indan reservations, it is obvious that Congress intended by the later act of September 21, 1922, that patents issued after the latter date to such organizations for lands on Indian reservations should specify that the lands will revert to the Indian owners when no longer used for missionary purposes. 50–676

143. The transferee of an entryman of Fort Peck Indian lands is entitled under the act of June 15, 1926, to the same benefits as to extension of time within which to complete payments as that act and the prior act of March 4, 1925, accord to the entryman himself. 51–523

II. Allotment

See EXCHANGE OF LANDS; PATENT; RAILROAD GRANT, 51–79; TURTLE MOUNTAIN INDIANS, 46–14.

144. Instructions of May 16, 1925, allotments to Indians and Eskimos in Alaska; Circular No. 491, modified. (Circular No. 1006.) 51–145

[For further regulations and instructions governing Indian allotments, see paragraphs 235–243.]

145. Where Indians have voluntarily made settlement upon lands not reserved therefrom, the Land Department is without authority arbitrarily to deny them allotments on the ground that the lands are too poor in quality. 51–91

146. The provisions of section 4 of the act of February 8, 1887, authorizing allotments to the minor children of an Indian settler on the public domain, include stepchildren and all other children to whom the settler stands *in loco parentis.* 41–626

147. The right to allotment under section 4 of the act of February 8, 1887, is limited to recognized members of an Indian nation or tribe; and the mere fact that an Indian is descendant of one whose name was at one time borne upon the rolls, and who was recognized as a member of a tribe, does not of itself make such Indian a member of the tribe. 42–489

148. An Indian settler upon the public domain entitled to take an allotment under section 4 of the act of February 8, 1887, as amended February 28, 1891, is authorized under that section to take allotment on behalf of his minor children, stepchildren, or other children to whom he stands *in loco parentis.* 43–149

149. Section 4 of the act of February 8, 1887, authorizes allotment of public lands only to persons recognized by the laws and usages of an Indian tribe as members thereof, or entitled to be so recognized. 43–149

150. The *quantum* of Indian blood or of white blood possessed by an applicant for allotment under said section 4 does not control and should not be considered in determining the right to allotment. 43–149

151. An Indian woman who by reason of her marriage to a white man is prevented from complying with the terms and conditions of section 4 of the act of 1887 is not entitled to an allotment thereunder, and for the same reason her minor children living under her care and protection are not so entitled. 43–149

152. An Indian woman married to a white man, a citizen of the United States, and the children born of such marriage, if recognized as members of an Indian tribe or entitled to be so recognized, are entitled to allotments on the public domain under section 4 of the act of February 8, 1887, as amended by the act of February 28, 1891, if otherwise within the terms and conditions of that section. 43–125

153. The benefits conferred by section 4 of the act of February 8, 1887, are upon Indians as such who make settlement upon the public lands; and an Indian woman who is living on the public domain with her husband, who is a settler thereon under the general homestead law, is not by reason thereof a settler within the meaning of said section and is therefore not entitled to make an allotment thereunder for her minor child. 43–504

154. A Sioux Indian who has received his pro rata share in the lands of his tribe, or its equivalent in scrip, as provided by the act of July 17, 1854, is disqualified from taking an allotment under the fourth section of the act of February 8, 1887, and his children, whether minors or having reached their majority, who never themselves sustained any tribal relations, are by reason of his disqualification likewise disqualified to take allotment under that section. 44–188

155. Not every person possessing a degree of Indian blood and who has not received an allotment, but without tribal affiliation or relationship, is entitled to the benefits of section 4 of the act of February 8, 1887. 44–188

156. The fact that a name appears on the roll made in 1908 of those entitled to share in the payment of money appropriated by Congress in pursuance of a judgment of the Court of Claims in favor of the Sisseton and Wahpeton Bands of Sioux Indians, does not of itself evidence a right to be recognized as a member of the tribe and entitled to allotment under section 4 of the act of February 8, 1887. 44–188

157. The right to allotment on an Indian reservation is limited to members of the tribe in being at the date of the closing of the allotment rolls; but the closing of the rolls does not necessarily bar applicants from taking allotments on the public domain under section 4 of the act of February 8, 1887, if they otherwise possess the qualifications prescribed by that section. 44–520

158. The minor children of an Indian woman and a white man are entitled to allotment under section 4 of the act of February 8, 1887, only where the mother is qualified and files application for allotment in her own right and makes settlement under that section, and she alone is authorized to make application in their behalf. 44–520

159. The determination of the qualifications of an Indian applicant under section 4 of the act of February 8, 1887, as well as the character of the lands, is a matter resting solely in the judgment of the department, and third parties are not privileged to intervene. 51–98

160. While the Indian's assertion of claim to land embraced in an allotment application under section 4 of the act of February 8, 1887, must be based upon the reasonable use or occupancy thereof consistent with his mode

of life, yet in examining the acts of settlement and determining the intention and good faith of the applicant, due and reasonable consideration should be given to the habits, customs, and nomadic instincts of the race, as well as the character of the land and climate. 47–187

161. In determining the intention and good faith of an Indian applicant for allotment of public lands, the sufficiency of establishment and maintenance of residence is wholly between the Government and the Indian, where no adverse or conflicting rights are involved, and in this connection reasonable consideration is to be given to the habits, customs, and nomadic instinct of the race as well as to the character of the land. 51–91

162. Where a long period of time elapses after approval of an Indian allotment under section 4 of the act of February 8, 1887, it will be assumed that the department had before it ample evidence, both as to the Indian's settlement and character of the land involved, to warrant such approval. 47–187

163. The mere fact that a tract of vacant public land has growing upon it some valuable timber is not of itself sufficient to prevent its being taken as an Indian allotment under section 4 of the act of February 8, 1887. 47–187

164. The act of March 3, 1909, which makes provision for allotments in severalty, is confined to such allotments on Indian tribal or reservation lands, and has no application to allotments on public lands made pursuant to section 4 of the act of February 8, 1887. 48–567

165. Section 4 of the act of February 8, 1887, does not confer upon an Indian a vested right to an allotment of public lands thereunder, and such right can not be acquired prior to the fulfillment of all of the conditions set forth in the act. 48–567

166. Children of an allottee, born after the parent had made an allotment under section 4 of the act of February 8, 1887, having received the status of United States citizenship by section 6 of that act, were not entitled to allotments thereunder, and the act of May 8, 1906, which amended section 6 of the former act by postponing the citizenship status until the expiration of the trust period, has no retroactive effect upon the children of allottees whose allotments were made prior to the enactment of the amendment. 48–567

167. An Indian allotment may be allowed under section 4 of the act of February 8, 1887, for oil and gas lands with reservation of the mineral contents to the United States. 51–91

168. Indian allotments of public lands under section 4 of the act of February 8, 1887, are not excepted from the operation of the act of July 17, 1914. 51–98

169. Section 4 of the act of February 8, 1887, provided for two classes of Indian settlers: (1) Those not residing upon a reservation, and (2) those for whose tribe no reservation had been made by treaty, act of Congress, or Executive order. 51–98

170. The mere filing of an application for allotment on public lands under section 4 of the act of February 8, 1887, does not secure to the Indian a vested right, and until his right becomes vested Congress may impose such restrictions as it may see fit. 51–98

171. The provision in section 5 of the act of February 8, 1887, relating to the issuance to Indian allottees of patents after the expiration of the trust period, conveying the land in fee, discharged of the trust and free of all charge or incumbrance whatsoever, when construed in conjunction with subsequent legislation, does not prevent the issuance of restricted patents under acts of Congress which require reservations in grants under nonmineral land laws. 51–91

172. The fact that an Indian had settled upon, occupied, and improved a tract of public land outside of a

reservation is evidence that he was not residing upon a reservation and that he had abandoned his tribal relations. 51–98

173. The right to an allotment under section 4 of the act of February 8, 1887, is one of the rights reserved to the Indians by the proviso to the act of June 2, 1924, which conferred citizenship upon them generally. 51–379

174. Section 14 of the act of June 25, 1910, authorizing the Secretary of the Interior to cancel Indian trust patents issued on allotments within power or reservoir sites within Indian reservations, contemplates that such patents shall be canceled only in instances where the lands are required or reserved for irrigation purposes authorized under act of Congress. 42–4

175. All applications for preliminary and final power permits presented under the act of February 15, 1901, and the regulations of March 1, 1913, on lands within Indian reservations or allotments, should be filed with the register and receiver of the proper local land office, and after notation thereof transmitted to the General Land Office, whereupon they will be referred to the Geological Survey and the Commissioner of Indian Affairs for report and recommendation. 42–419

176. The acts of Congress authorizing allotment of Sioux Indian lands contemplate allotments only to living persons; and where one entitled to allotment dies without allotment having been made or selection filed by him or in his behalf, the right perishes with him and his heirs are not entitled to allotment based upon his right. 42–582

177. No such right is acquired by the mere inspection of a tract of land and decision to take it as an allotment, without application therefor or selection thereof during the lifetime of the proposed allottee, as will entitle his heirs, after his death, to an allotment of the land. 42–582

178. The same rules and regulations should govern in the making of additional allotments to Fond du Lac Indians under the provisions in the Indian appropriation act of June 30, 1913, as are applicable in the case of original allotments; and where one otherwise entitled to an additional allotment under that provision dies without allotment having been made or selection therefor filed by him or in his behalf, the right perishes with him, and his heirs are not entitled to make allotment based upon his right. 42–446

179. A Santee Sioux Indian by taking an allotment of lands settled upon by him within the area set apart for the Santee Sioux tribe by executive proclamation of July 20, 1866, does not exhaust or in any wise affect his right, as a citizen of the United States by virtue of section 6 of the act of February 8, 1887, to make a homestead entry of public lands. 42–192

180. There is no provision of law authorizing the Secretary of the Interior to accept the surrender for cancellation of an Indian trust patent issued under the act of March 3, 1885, and to issue in lieu thereof two trust patents, one to the allottee for part of the land and the other to his wife for the remainder. 43–101

181. In instances where the Secretary of the Interior may, in the interest of an Indian allottee, permit him "to take another allotment," under authority of the act of April 23, 1904, he may cancel the trust patent issued upon the first allotment, without specific authority of Congress, notwithstanding such allotment may not have been erroneously made and notwithstanding there may have been no mistake in the description of the land inserted in the patent. 43–84

182. Where the land embraced in an allotment to an Indian minor under section 4 of the act of February 8, 1887, upon selection made for the benefit of the minor, and for which trust patent has issued, is so rough, rocky, and hilly as to be practically worthless for any purpose, the Secre-

tary of the Interior, under authority of the act of April 23, 1904, may, upon the allottee becoming of age, accept a relinquishment of the allotment, cancel the trust patent, and permit the allottee to take another allotment for other land. 43–84

183. Allotment on the public domain under section 4 of the general allotment act of February 8, 1887, additional to an allotment previously allowed and upon which trust patent has issued, can not be allowed for lands noncontiguous to the original allotment. 44–391

184. To entitle a member of the Turtle Mountain Band of Chippewa Indians to an allotment selection on the public domain under the act of April 21, 1904, it must affirmatively appear that the applicant was in being October 8, 1904, the date the act of April 21, 1904, was ratified and accepted by the Indians. 44–524

185. The census of Chippewa Indians in the State of Minnesota made by the commissioners appointed under the act of January 14, 1889, must be accepted as affording an authoritative list of the names of persons entitled to be considered members of the several tribes at the time it was made and entitled to the benefits provided by said act, and the Secretary of the Interior has no authority to eliminate from the rolls any name placed thereon by the commission for any cause arising prior to such enrollment. 44–531

186. Where a trust patent covering an allotment on the Fort Berthold Indian Reservation was surrendered and relinquished for cancellation and other land selected in lieu thereof under the provisions of the act of October 19, 1888, new patent of like form and legal effect should issue for the lieu land so selected, as authorized by said act, notwithstanding the selected land has been classified and withdrawn as valuable for coal under the act of June 1, 1910, where it appears that the lieu land allotment was made in the field prior to the passage of the act of 1910 and was approved for patent by the Secretary of the Interior prior to the classification and withdrawal of the land as coal. 44–382

187. A trust patent issued upon an Indian allotment selected by a parent on behalf of his minor child may be canceled upon relinquishment without recourse to the act of April 23, 1904, it appearing that the child subsequently abandoned his tribal relations and adopted the habits of civilized life, receiving no benefit from such allotment; and when as a citizen he applies for and is allowed to make homestead entry the same will be held intact subject to compliance with law. 46–490

188. Indian homesteads and Indian allotments are in all essential respects upon the same footing, and are equally within the purview of the act of June 21, 1906, which affords authority for the extension of the trust period in the matter of trust patents issued thereon. 47–574

189. Actual occupancy and continuous use of a tract of land by an Alaskan native prior to its inclusion within a national forest confer upon the occupant a preference right to an allotment homestead under the act of May 17, 1906, which is not affected by the withdrawal, although the application for the allotment was filed subsequently to the issuance of the proclamation creating the reservation. 48–362

190. Nothing in the act of March 4, 1913 (37 Stat. 1007), nor the act of February 8, 1887 (24 Stat. 388), as amended by the act of February 28, 1891 (26 Stat. 794), requires of an Indian allottee residence upon, cultivation, and improvement of the land. 46–426

191. The Secretary of the Interior is without authority to approve an application under the act of March 3, 1891, for right of way over land covered by a trust patent on an Indian

allotment made under section 4 of the act of February 8, 1887. 44–511

192. A fee patent issued on an Indian allotment should include and describe the legal subdivisions covered by the allotment, inclusive of areas covered by approved railroad rights of way under the act of March 2, 1899, with the usual clause that the conveyance is subject to such rights of way. 45–473

193. The relinquishment of allotted lands in the Uintah and White River Ute Indian Reservation and the selection in lieu thereof of lands within the grazing reserve established by the joint resolution of June 19, 1902, as modified by the acts of March 3, 1903, and March 3, 1905, is authorized and governed by the provisions of the act of October 19, 1888, and not the exchange provisions of the act of March 3, 1909, which are applicable only where allotted lands are exchanged for *ceded* lands. 45–509

194. Allotted lands relinquished under the act of October 19, 1888, as a basis for selection of other Indian lands in lieu thereof, are not subject to disposal under the homestead laws. 45–509

195. Lands in the north half of the Colville Indian Reservation, allotted in severalty and held under trust patents, constitute a reservation of the United States within the meaning of section 18 of the act of March 3, 1891, and the department has jurisdiction, with consent of the allottee or after condemnation proceedings, to approve, under that act, rights of way across the same for an irrigation canal. Departmental decision in Icicle Canal Co. (44 L. D. 511) distinguished. 45–563

196. The acts of Congress authorizing allotment of Sioux Indian lands contemplate allotments only to living persons; and where one entitled to allotment dies without allotment having been made or selection filed by him or in his behalf, the right perishes with him and his heirs are not entitled to allotment based upon his right. 45–568

197. The Executive order of August 24, 1889, annulled the prior order of May 17, 1887, and directed allotment work anew on the Yankton Reservation. *Held*, the right to allotment must be determined in accordance with conditions existing August 24, 1889, the date of the President's later order. 45–568

198. Section 31 of the act of June 25, 1910, is not limited in its application to Indians occupying, living on, or having improvements on lands within national forests at the date of the passage of said act. 46–283

199. The listing and opening to entry of lands under the provisions of the forest homestead act of June 11, 1906, do not preclude their being taken as Indian allotments under section 31 of the act of June 25, 1910. 46–283

200. The effect of section 31 of the act of June 25, 1910, is to extend "to any Indian occupying, living on, or having improvements on land included within" national forests, the provisions and benefits of prior laws giving to Indians a right to public lands. 46–283

201. An Indian otherwise qualified may have his allotment right satisfied from coal lands in national forests subject to surface entry under the act of June 22, 1910. 46–283

202. Only agricultural and grazing lands are subject to allotment under section 4 of the act of February 8, 1887, and where the lands embraced within an allotment application under that act are chiefly valuable for their coal contents, the allottee must file an election as prescribed by the act of March 3, 1909, and take with a reservation of the coal to the United States, as required by the act of June 22, 1910. 48–567

203. The act of July 17, 1914, providing for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals, has no application to lands within the former Kiowa, Comanche, Apache, and Wichita reservations, which have been at

all times since opened to entry subject to disposition exclusively under nonmineral laws. 47–331

204. The surplus coal lands within the Fort Peck Indian Reservation, Mont., the disposal of which after allotment was authorized by the special act of May 30, 1908, are not "public lands" or lands "owned by the United States" within the meaning of the general leasing act of February 25, 1920, and are not, therefore, subject to the operation of the latter act, but are still to be disposed of under the provisions of the coal land laws, sections 2347–2352, Revised Statutes. 48–440

205. A right of way granted under the act of May 14, 1898, is not adversely affected by the allowance pursuant to the act of May 17, 1906, of an allotment homestead to an Alaskan native upon an application predicated upon prior occupancy and continuous use of the land, where the map of definite location of the right of way was approved prior to the passage of the act which authorized the allotment. 48–362

206. An allotment granted to an Alaskan native under the act of May 17, 1906, constitutes a "vested right" that should be construed in the ordinary significance of that term; that is, as including "an immediate and fixed right to present and future enjoyment." 48–435

207. The approval by the Secretary of the Interior of an allotment homestead to an Alaskan native pursuant to the act of May 17, 1906, for a tract of unsurveyed land, subject to adjustment to the lines of survey, confers upon the allottee a vested right in the land which is not affected by the subsequent issuance of an Executive order reserving that tract together with other lands for the common use of a native Alaskan village. 48–435

208. The acts of May 27, 1902, March 1, 1907, and June 25, 1910, granting authority to the Secretary of the Interior to approve sales of lands allotted to Indians and to otherwise remove restrictions against alienation by the issuance of certificates of competency, are applicable to lands allotted to the Indians of the Fort Hall Reservation, Idaho, thus removing the requirement of approval by the President imposed by the act of February 23, 1889, with respect to the alienation of lands allotted in severalty within that reservation. 48–455

209. It was clearly intended by the terms of section 6 of the act of August 7, 1882, which provided for the allotment of lands in the Omaha Reservation, Nebr., that the determination of questions of descent in the event of the death of an allottee should be controlled entirely by the statutes of that State from the time of the issuance of the trust patent, and consequently the common law rule of descent has no application to cases arising under that act. 48–221

210. The interests of a deceased allottee under a trust patent issued for lands in the Omaha Reservation, Nebr., allotted by the act of August 7, 1882, descend in accordance with the laws of that State to the surviving husband or wife and sons and daughters of the decedent, and upon the death of all of the children, without issue, the entire estate inures to the surviving parent. 48–222

211. The acts of May 18, 1916, and February 14, 1920, authorize the Secretary of the Interior to collect certain fixed fees upon the approval of a will of an Indian allottee, and the fees prescribed by law become due and collectible upon approval of the will of a Chippewa Indian devising lands held under a restricted fee patent issued pursuant to the treaty of September 30, 1854. 48–472

212. Approval by the Secretary of the Interior, under authority conferred by the act of February 24, 1913, of a will by a Chippewa allottee, devising Indian lands held under a restricted fee patent issued pursuant to the treaty of September 30, 1854, does not

remove the restrictions against alienation of such lands, imposed by the provisions of that treaty. 48–472

213. A member of the Crow Tribe of Indians who was enrolled on June 4, 1920, but who died subsequently thereto, comes within the class entitled to a pro rata distribution of the remaining unallotted allotable lands of the Crow Reservation, Mont., authorized by the act of that date, regardless of whether or not a selection was made prior to death. 48–479

214. An "expectancy" consisting of the right to share in the final division of the unalloted lands in the Crow Reservation, Mont., is a descendible right which in case of intestacy inures to the benefit of the heirs, and may be devised, subject to the approval of the Secretary of the Interior, pursuant to section 2 of the act of June 25, 1910, as amended by the act of February 14, 1913. 48–479

215. The Secretary of the Interior is without power to cause the cancellation of a patent in fee which has been placed of record in the General Land Office, though never delivered, and where such a patent has been inadvertently issued, under authority of the act of May 8, 1906, on the ground of competency, to a deceased allottee, even prior to the expiration of the trust period, the function of vacating the same rests exclusively in the courts. 48–609

216. Restrictions against alienation on land allotted to Indians are more in the nature of personal disabilities imposed on the allottee than covenants running with the land—a matter of personal privilege which Congress may enlarge or restrict as and when it sees fit. 49–348

217. In the absence of specific legislation by Congress to the contrary, lands allotted in severalty to Indians are nontaxable prior to the removal of restrictions against alienation, even though the statutory period of exemption originally provided for may have expired. 49–348

218. While Congress may lengthen or shorten the period of restrictions against alienation as and when it may see fit so to do, yet the exemption from taxation for the prescribed period is a definite and fixed property right, which having once vested in the allottee Congress can not thereafter alter or take away. 49–348

219. While sections 1 and 4 of the act of May 27, 1908, which provided for the allotment of lands to the Five Civilized Tribes, removed all restrictions from all lands, including homesteads, allotted to intermarried whites, freedmen, and mixed bloods having less than one-half Indian blood, and directed that all lands from which the restrictions shall have been removed should be subject to taxation, yet the homesteads held by the original allottees are not subject to taxation prior to the expiration of the statutory period of exemption, and by the proviso to section 9 of the act the restrictions are continued during that period as long as the title to such lands remains in the hands of the full-blood Indian heirs of such allottees. 49–348

220. There is no authority whereunder the Secretary of the Interior can require the purchasers, or their assignees, of lands allotted in severalty to Indians on the Wind River Reservation, Wyo., to whom patents in fee had previously been issued, to contribute toward defraying the construction costs of the irrigation system upon that reservation. 49–370

221. Section 16 of the act of June 4, 1920, although purporting to be a grant *in præsenti* of certain lands within the Crow Indian Reservation to the State of Montana for school purposes, is not to be construed as a denial of the right of those Indians in certain specific classes designated by the act to select such lands for allotments. 49–376

222. The act of March 3, 1901, which authorized condemnation for public purposes pursuant to State or Territorial laws of lands allotted in sever-

alty to Indians did not, either expressly or by implication, repeal any prior act, nor was it repealed by subsequent acts of Congress relating to the acquisition of rights of way across Indian lands. That act and the various Federal rights of way statutes are to be construed conjointly or, if need be, independently of each other. 49–396

223. The term "public purpose," as used in the act of March 3, 1901, is to be construed to mean any purpose which would be deemed a public purpose under the laws of the State or Territory within which the allotted Indian lands are sought to be condemned. 49–397

224. The proceeds derived from sales of lands allotted to Indians with restrictions against incumbrance and alienation are impressed with a trust to the same extent as were the lands before the sale. 49–414

225. While the exemption from taxation for a definite period acquired by an Indian allottee under a trust patent is a vested right of which he can not be deprived without his consent, yet, where he voluntarily applies for and obtains a patent in fee simple under the act of May 8, 1906, he thereby waives his right to the exemption from taxation during the remainder of the original trust period. 50–691

226. Valid discovery of a mineral deposit, being one of the essential elements of a mining claim, is also a prerequisite to the granting of a lease based on a mining claim pursuant to section 26 of the act of June 30, 1919, as amended by the act of March 3, 1921, which relates to the leasing of specified deposits of minerals in unallotted lands within Indian reservations in certain States that were withheld from disposition under the mining laws of the United States. 49–421

227. The requirement in section 26 of the act of June 30, 1919, that a copy of the location notice must be filed as specified therein within 60 days after location of a mining claim for mineral deposits in an Indian reservation, can not be waived, and if the locator fails to comply strictly therewith he forfeits all right to be preferred in the award of a lease thereunder. 49–421

228. Administrative officers, being without authority to alter or amend existing law or to waive the specific requirement of a statute, can not waive that requirement in section 26 of the act of June 30, 1919, which provides that an applicant for a lease based upon a mining claim on Indian lands shall file application therefor within one year from the date of location. 49–424

229. Inasmuch as an official survey of a mining claim located within an Indian reservation is not required prior to application for a lease based thereon under the act of June 30, 1919, delay on the part of administrative officers in causing a survey to be made, or in furnishing blank forms of lease, can not be pleaded as a ground for failure on the part of the applicant to comply with the plain requirements of the statute. 49–425

230. A homestead application should not be rejected because of conflict with a pending Indian allotment application, but should be received and suspended to await final action on the allotment application. 44–21

231. An Indian allotment application under section 4 of the act of February 8, 1887, filed prior to the regulations of September 23, 1913, does not, in the absence of evidence from the Indian Office showing that the applicant is an Indian entitled to allotment, segregate the land, and a subsequent application for the same land may be received and suspended to await final action on the allotment application. 44–229

232. Where an Indian allotment application under section 4 of the act of February 8, 1887, filed subsequent to the regulations of September 23, 1913, was not accompanied by evidence from the Indian Office showing applicant

entitled to allotment, and the applicant was given time to furnish such evidence, the application does not segregate the land, and other applications therefor may be received and held to await final action on the allotment application. 44–229

233. Where an allotment application under section 4 of the act of February 8, 1887, accompanied by evidence from the Indian Office showing that the applicant is an Indian and entitled to allotment, as required by the regulations of September 23, 1913, is found to be in all other respects complete and is accepted by the local officers, it operates as a segregation of the land, and subsequent applications for the same land should be rejected. 44–230

234. A homestead application for land segregated by an Indian allotment selection, and rejected for that reason, has no further vitality, and a later determination that the Indian was not qualified to take the allotment will not rehabilitate the homestead application, although the land becomes again subject to entry. 46–15

235. Instructions of December 27, 1915, amending last paragraph of instructions of June 14, 1909, under the act of March 3, 1909, relating to exchange of allotments. 44–505

236. Instructions of October 16, 1916 (Circular No. 511), concerning exchange of allotments on ceded lands, under act of March 3, 1909. 45–492

237. Instructions of November 10, 1916, concerning allotment selections by Turtle Mountain Indians. 45–534

238. Instructions of January 11, 1917, governing patents in fee on allotted lands in Blackfeet, Fort Peck, Flathead, Okanogan, and Yakima irrigation projects. 45–600

239. Regulations of April 15, 1918, relative to Indian allotments under section 4, act of February 8, 1887, as amended. 46–344

240. Regulations of May 4, 1918, regarding allotments to Indians of withdrawn lands in former Fort Peck Indian Reservation. 46–380

241. Instructions of March 22, 1920; allotment applications by married Indian women. (Circular No. 675.) 47–345

242. Instructions of April 16, 1921; allotments to Indians and Eskimos in Alaska; act of May 17, 1906. (Circular No. 749.) 48–70

243. Instructions of January 24, 1922, relative to Indian allotments under section 4, act of February 8, 1887. 48–525

244. Under provisions contained in the acts of February 8, 1887, and June 21, 1906, authorizing the President, in his discretion, to extend the period of the trust on Indian allotments, such authority, if exercised at all, must be invoked prior to the expiration of the trust period. 48–643

245. Fee patents predicated upon trust allotments of deceased Indian allottees should be issued to the heirs generally without naming them or attempting to set up their respective interests, regardless of whether or not the heirs have been determined by the department or by the courts. 48–643

III. Trust Lands and Funds

See INDIAN LANDS, II.

246. Lands purchased by Indians with funds derived from the sale of trust lands, and not released from Government control, are charged with the trust and not subject to taxation during continuation of the trust period. 43–26

247. Lands purchased with Indian trust funds continue to be impressed with the trust as originally declared, irrespective of whether the purchased property was previously restricted or unrestricted, and the Secretary of the Interior is clothed with full authority to determine the descent thereof to the same extent as he is with respect to the original property from the sale of which the purchase funds were derived. 49–414

248. Property purchased with Indian trust funds, even though unre-

stricted prior to purchase, is exempt from taxation until the termination of the trust period. 49–414

249. The jurisdiction of the Secretary of the Interior over Indian trust allotments ceases automatically on expiration of the trust period and thereafter he is without authority to exercise any control thereover other than to issue a patent in fee to the allottee, or to his heirs, as the case may be. 48–643

250. Questions relating to the validity of conveyances made by an Indian trust allottee or his heirs during the interval between the expiration of the trust period and the issuance of a fee patent are cognizable primarily by the courts. 48–643

IV. Extension of Time for Payments

251. Instructions of March 24, 1925, extension of time for payments on Fort Peck Indian lands. (Circular No. 986.) 51–76

252. Instructions of May 16, 1925, extensions of time for payments on Cheyenne River and Standing Rock Indian lands. (Circular No. 1007.) 51–146

253. Instructions of July 14, 1926, extension of time for payments on Crow Indian lands. (Circular No. 1080.) 51–490

254. Instructions of July 20, 1926, extension of time for payments on Fort Peck Indian lands. (Circular No. 1081.) 51–498

INSANITY

1. The equitable title which vests in a homestead entryman under the act of June 8, 1880, upon his becoming insane, is subject, where the land lies within a reclamation project, to the provisions of the reclamation act; and upon the establishment of farm units, patent can issue to him for only one of the farm units formed from his entry, the remaining units being subject to assignment under the act of June 23, 1910, by his legal guardian duly authorized to act for him during his mental disability. 41–634

2. Prior to the issuance of patent upon a homestead entry the title remains in the United States, and State courts have no jurisdiction to fix the right of succession to the land or to determine under what circumstances the right thereto shall pass from the entryman to a successor in interest. 41–634

3. In the absence of charges against the homestead entry of one who becomes insane, the entry should as a rule be perfected and title taken under the act of June 8, 1880; but if it appear to a court of competent jurisdiction that the entryman has a doubtful right which should be sold rather than attempt proof to obtain patent, the judgment of the court in that respect should ordinarily be followed and relinquishment of the claim permitted. 43–56

4. Departmental decision in Dyche *v.* Beleele (24 L. D. 494), so modified that if there be a pending charge against the entry and reasonable doubt of the validity of the entry or of entryman's compliance with law to the time he became insane, relinquishment may be permitted, upon judgment of a court of competent jurisdiction, in order that the estate may realize the most possible out of the doubtful claim; but if no question exist in that respect, the entry should be perfected and patent issued to the entryman under the act of June 8, 1880. 43–56

5. Where the right of an insane entryman to patent under the act of June 8, 1880, fully vested prior to his death, such right descends to his heirs, and patent may issue to them upon submission of proper proof. 45–2

6. Departmental decision in Heirs of Anthony Siankiewicz (38 L. D. 574), modified in so far as it holds that the act of June 8, 1880, "can be applied only in case the entryman be living at the time the application is made to offer proof." 45–4

7. As long as a proceeding of guardianship remains in force in a court

having jurisdiction of such matters, the appointment of a guardian is conclusive upon the Land Department, and an adjudication that a man is of infirm mind, disqualified to conduct his own affairs, so that the appointment of a guardian is necessary for his protection, closes the question against any inquiry by the Land Department. 45–191

8. Service of notice of contest against an entryman legally adjudged insane may be made by delivering a copy of the notice to the statutory guardian or committee of the entryman. 45–467

9. The act of June 8, 1880, providing for the protection of the rights of homestead settlers who become insane, has no application where the entryman prior to becoming insane failed to comply with the law in good faith. 45–467

10. While the present Rules of Practice, approved December 9, 1910, make no provision for service of notice on a person of unsound mind, yet rule 9 of Practice, adopted December 23, 1896, does so provide and, as it has never been revoked, service in accordance with its provisions will be deemed sufficient. 47–3

11. Where an entryman has made due compliance with the requirements of the homestead law prior to becoming insane, it is the duty of the guardian, immediately after appointment, to submit final proof as provided by the act of June 8, 1880; and his failure to so act, and the subsequent death of the claimant, do not demand the rejection of the proof thereafter submitted by such guardian within the statutory life of the entry establishing compliance with law. 47–112

12. A charge of fraud, connivance, or conspiracy is not sustained where it is shown that the conservator or the administrator of the estate of an insane or of a deceased homestead entryman, acting in good faith and with the approval of a court of competent jurisdiction, for a valuable consideration to the enrichment of the estate, fails to submit final proof or make defense to a contest under the belief that it would be futile to do so on account of doubtful right by reason of noncompliance with the statutory requirements as to residence and cultivation on the part of the entryman. 48–167

13. The fact that the widow of a homestead entryman, who died before he had earned patent, was insane and confined in an asylum at the time that the claim was initiated, and thereafter remained in that condition, does not deprive her of her exclusive right to perfect the claim and receive title thereto, and her guardian has no power to relinquish the entry or in any way divest her of her interest therein. 49–169

14. The benefits of the act of June 8, 1880, which provides that a person who becomes insane after initiating a claim under the homestead laws and before he has earned a patent shall be entitled to a patent on proper proof without further residence and cultivation, if he had in good faith complied with the legal requirements up to the time he became insane, inure to an insane widow who succeeds to all of the rights held by her husband at the time of his death. 49–169

15. The act of June 8, 1880, providing for completion of the claims of settlers and entrymen who become insane, has no application to desert land entries. 43–56

16. The relinquishment of a desert land entry executed by the guardian of the insane entryman under direction of a court of competent jurisdiction may be accepted and the entry thereupon canceled. 43–56

INSTRUCTIONS AND CIRCULARS

See TABLES OF, IN PART II.

INTERMARRIAGE

See HOMESTEAD, V.

INTERNATIONAL BOUNDARY LINE

See HOMESTEAD, 43–552.

INTERVENER

See PRACTICE, 50–638; SCHOOL LAND, 49–531.

IRRIGATION

See ARID LAND; DESERT LANDS, 42–295, 412; INDIAN LANDS, 45–600; 51–613, 614; PAYMENT, 50–143; RECLAMATION, 50–142, 143, 223, 224, 521; RIGHT OF WAY, 50–359.

IRRIGATION DISTRICTS (STATE)

See STATE IRRIGATION DISTRICTS.

IRRIGATION PROJECTS

See RECLAMATION.

ISOLATED TRACTS

See IMPERIAL VALLEY LANDS, 44–75; 45–88; INDIAN LANDS, 43–181; 47–57; OREGON AND CALIFORNIA RAILROAD LANDS, 47–418; REPAYMENT, 44–588.

1. Revised regulations of December 18, 1912, governing sale of isolated tracts within the area affected by the Kinkaid Acts. 41–496

2. Circular of December 18, 1912, concerning sale of isolated tracts. 41–443

3. Regulations of December 18, 1912, governing sale of isolated tracts under the act of March 28, 1912. 41–448, 500

4. Regulations of December 18, 1912, governing sale of isolated coal tracts under act of April 30, 1912. 41–448, 501

5. Instructions of April 17, 1913, respecting sale as isolated tracts of lands "mountainous and too rough for cultivation," under act of March 28, 1912. 42–88

6. Regulations concerning the sale of isolated tracts within the area covered by the Kinkaid Acts. 42–227

7. Circular of July 17, 1913, governing the sale of isolated tracts. 42–236

8. Circular of January 11, 1915, governing offerings at public sale under section 2455, R. S., and the act of March 28, 1912. 43–485

9. Regulations of October 31, 1917 (Circular No. 569), amending paragraphs 2 and 5 of circular of January 11, 1915. 46–225

10. General regulations of April 16, 1920. (Circular No. 684.) 47–382

11. Instructions of June 28, 1920, relative to sale of isolated tracts, Fort Berthold Indian Reservation. (Circular No. 706.) 47–416

12. Instructions of November 8, 1921; isolated tracts on Fort Buford Military Reservation. 48–297

13. Regulations of February 25, 1926, isolated tracts. (Circular 684, revised.) 51–357

14. It is within the discretion of the Commissioner of the General Land Office to determine when a tract of land is isolated and whether or not the same should be offered for sale under section 2455, Revised Statutes. 40–74

15. An order by the Commissioner of the General Land Office directing the sale of an isolated tract does not affect the authority of the President to thereafter withdraw the land for forestry purposes; and cash entry allowed upon sale of the land after such withdrawal is invalid. 41–370

16. An order by the Commissioner of the General Land Office to sell an isolated tract contemplates the offering of the land for sale after legal notice has been given, and where, after offering and accepting a bid for the land, the local officers discover that the notice of sale was defective, they have jurisdiction, without further order from the commissioner, to direct republication of notice and to reoffer and sell the land in accordance therewith. 41–587

17. Under the act of June 27, 1906, the publication of notice for at least 30 days preceding the date of offering for sale of an isolated tract is essential to the jurisdiction of the local officers to make the sale; and a sale made on a publication of less than 30 days is invalid and can not stand. 41–587

18. Where, on account of defect in the publication of notice of the offering of an isolated tract, republication and reoffering are had, and the applicant at whose instance the original offering was made appears and bids at the reoffering, the sale made to another, a higher bidder, at such reoffering, will not be set aside on the ground that the applicant did not receive proper notice of the time and place of the reoffering. 41–588

19. The fact that an applicant for the sale of an isolated tract has accepted from the successful bidder the amount paid by him as fee for publication of notice of the sale, will not prevent the Land Department, in case of error in the proceedings, from setting aside the sale and authorizing a resale of the tract upon application therefor by the former applicant. 42–1

20. Where at the sale of an isolated tract the amount bid goes above the sum a bona fide bidder has in hand, and he desires to continue bidding, he may deposit the amount he has in hand, as an evidence of his good faith, and be permitted to participate further in the bidding, on condition that, if the tract be awarded to him, he make his bid good during the business hours of the day, the sum deposited by him to be, in such event, credited upon his bid. 42–1

21. Where two or more contiguous legal subdivisions, aggregating less than a quarter section, comprise one isolated or disconnected tract, they should, as a matter of good administration, be ordered into market and sold together as one piece of land; but the sale of part only of the legal subdivisions comprising an isolated tract is within the discretionary power conferred upon the Commissioner of the General Land Office by the statute and may be permitted to stand. 42–180

22. The provision in section 3 of the act of May 29, 1908, that the surplus unallotted agricultural lands in the former Spokane Indian Reservation remaining undisposed of at the expiration of four years from the opening of said lands to entry shall be appraised and sold at public auction under sealed bids to the highest bidder for cash at not less than their appraised value, is mandatory; and there is no authority of law for disposing of any of said lands as isolated tracts under the act of June 27, 1906. 42–12

23. The fact that an applicant to have an isolated or disconnected tract offered for sale does not personally appear and bid for the land, but procures another, as his agent, to appear and make the purchase for him, in no wise affects the validity of the sale. 42–151

24. The fact that part of the land contiguous to a tract otherwise surrounded by lands which have been entered, filed upon, or sold by the Government, is embraced in an application to make soldiers' additional entry, does not prevent the inclosed tract from being regarded and sold as an isolated or disconnected tract within the meaning of the act of June 27, 1906. 42–151

25. A married woman, otherwise qualified, is entitled, upon proper application, to have offered and to purchase, under the provisions of section 2455, Revised Statutes, as amended by the act of March 28, 1912, an isolated or mountainous tract within the purview of that act. 42–466

26. The act of March 3, 1909, providing for the sale of isolated tracts of public lands in Imperial Valley, has no application to lands which were, at the date of the passage of that act, included in a bona fide claim under the public land laws. 42–545

27. The act of June 27, 1906, and the regulations thereunder, governing the sale of isolated tracts, contemplate a cash sale, and the bidder to whom a tract is awarded must immediately deposit the amount of his bid with the receiver. 43–342

28. Congress having by the act of April 27, 1904, provided a complete

system for the disposition of the ceded portion of the Crow Indian Reservation, and specifically declared that the lands opened to entry under that act shall be disposed of under the homestead, town site, and mining laws, such lands are not subject to sale as isolated tracts under section 2455, Revised Statutes, as amended. 43–181

29. Lands in that portion of the Fort Berthold Indian Reservation opened to entry by the President's proclamation of May 20, 1891, under the provisions of section 25 of the act of March 3, 1891, which provides that such lands shall be disposed of to actual settlers only under the homestead laws, are not subject to sale as isolated tracts under the act of March 28, 1912, amending section 2455, Revised Statutes. 44–354

30. Where an application is filed by one duly qualified under the provisions of the act of March 28, 1912, for the sale of a tract of land "mountainous or too rough for cultivation," jurisdiction is thereby conferred upon the Commissioner of the General Land Office, in the exercise of discretion, to order into market and sell at public auction such tract; and the intervening loss of qualification of the applicant does not affect the jurisdiction thus acquired. 47–1

31. Public land occupied by one under claim of title is not subject to entry by another, and an application to make homestead entry of such tract will not defeat the right of the occupant to acquire title under section 2455, Revised Statutes, which authorizes the sale of isolated tracts, or under any other applicable public land law. 50–239

JUDGMENT

See DESERT LAND, 51–472, 474.

JUDICIAL RESTRAINT

See CONTESTANT, 45–467, 559; HOMESTEAD, 48–625.

1. Regulations of October 20, 1917, concerning homestead entrymen placed under judicial restraint. 46–224

2. Instructions of October 31, 1925; homestead entrymen placed under judicial restraint; Circular No. 570, modified. (Circular No. 1037.) 51–264

3. Absence of a homestead entryman from his claim due to judicial restraint does not break the continuity of his residence and does not render the entry liable to contest on the ground of abandonment. 43–189

4. One at liberty on bail which obligates him not to leave the jurisdiction of the court is under judicial restraint. 43–189

5. A homestead entry is not subject to contest on the ground of abandonment where the entryman is placed under judicial restraint. 51–174

6. Upon the filing of evidence of the judicial restraint of a homestead entryman the entry will be held suspended for a period discretionary with the Commissioner of the General Land Office, having regard to the facts and circumstances adduced, and the entryman will be put on notice that at the expiration of the time limit the entry will be declared forfeited if, in the meantime, satisfactory final proof is not submitted or a relinquishment filed. 51–174

7. One at liberty on bail which obligates him not to leave the jurisdiction of the court is under judicial restraint. 43–188

JURISDICTION

See CONTEST, 48–537; 49–261; 50–16; EQUITABLE ADJUDICATION, 49–561, 562; EXECUTIVE DEPARTMENTS, 42–611; INDIAN LANDS, 42–493; 50–315; LAND DEPARTMENT, 41–295, 392; 46–20, 195, 201; 49–253; 50–521; NOTICE, 50–145, 199; OIL, GAS, ETC., LANDS, 49–634; PATENT, 49–548; 50–16; 51–45, 63, 170, 403; PRACTICE, 48–560; PRIVATE CLAIMS, 49–548; 51–591; SCHOOL LANDS, 47–152, 156; SECRETARY OF THE INTERIOR, 50–142, 149.

1. The mere fact that a tract of the public domain is covered by a mining location does not deprive the Land Department of its jurisdiction

and authority, until issuance of patent, to investigate and adjudicate the facts establishing the character of the land, or the status of any claim asserted thereto under the public land laws. 47–169

2. It is the peculiar function and duty of the Land Department to investigate and determine controversies involving the character of land arising between mineral locators and agricultural claimants preliminary to the issuance of patent, and in such cases the intervention of a local court is useless, except to preserve the *status quo* or to protect the property. 47–169

3. As the United States is without jurisdiction over the vacant and unappropriated private lands within the State of Texas, it has no duty to perform in the matter of surveys, determinations, or adjustments necessary to define the rights of any parties in interest; they must be performed by the State, or such tribunals as may have authority therefrom. 47–372

4. The tribunal vested with authority to determine whether or not rights are conveyed by an instrument has the power to control such instrument if declared invalid; and when so adjudged it should be canceled and deposited among the records of the tribunal that has passed upon its legality. 47–86

5. The Land Department, to which is committed exclusively the determination of the character of the public lands, may, in the exercise of that jurisdiction, select its own instrumentalities and methods, and an executive withdrawal and inclusion within a petroleum reserve of public lands upon a recommendation of the Geological Survey is one mode of classification which presumptively fixes their mineral character—provisionally, however, and subject to revocation upon further investigation or upon sufficient showing by a nonmineral claimant. 48–281

6. The courts, not the Land Department, have direct jurisdiction to determine questions pertaining to actual physical possession of lands in cases arising from conflicts between claimants under the acts of July 17, 1914, and February 25, 1920, respectively. 48–150

7. Consideration and adjudication of questions relating to the character of patented lands are solely within the jurisdiction of the courts and, after the issuance of a patent, the Land Department is without authority to try and determine any question of right pertaining thereto. 50–16

8. Prior to the issuance of patent, title to public lands under any of the homestead laws remains in the United States to be administered by the Land Department, and until then State courts are without jurisdiction to vest or divest title under any of those laws. 50–321

9. The enforcement of the provision in section 9 of the act of December 29, 1916, which obligates one who goes upon lands within a stock-raising homestead entry to prospect for mineral to reimburse the entryman for injury to his permanent improvements, is for the courts and not within the jurisdiction of the Land Department. 50–510

10. A contest on the ground of noncompliance with law will lie against a homestead entry under the act of June 6, 1912, after the expiration of six months from the date of entry, notwithstanding the entryman may have been placed under judicial restraint before the expiration of the six-month period, where he had not established residence and otherwise complied with the law prior to the time he was placed under such restraint. 45–559

11. Section 2449, Revised Statutes, declaring in terms all selection lists "perfectly null and void" if the lands certified are not of the character granted by the act upon which the selection is based, is inoperative to restore jurisdiction in the Land Department lost by the approval of a

certification of a tract of land selected by the State of Nevada under the grant of June 16, 1880, where the certifying officers acted within the scope of their authority and upon a presentation of evidence showing the land to be of the character contemplated by the grant. 51–566

KINKAID ACTS

See HOMESTEAD, XIV; ISOLATED TRACT, 42–227.

KIOWA, COMANCHE, APACHE, ETC., LANDS

See INDIAN LANDS, 44–86; 50–189; TOWN SITE, 50–189.

1. Instructions of February 11, 1919, revoking instructions of January 31, 1914 (43 L. D. 87), as to sale of Kiowa, Comanche, etc., lands. 47–24

2. Instructions of March 11, 1919, relative to payments for Kiowa, Comanche, etc., lands. 47–52

3. Instructions of April 8, 1919; contests involving pasture and wood reserve lands in Kiowa, Comanche, and Apache Reservations. (Circular No. 639.) 47–118

4. The act of July 17, 1914, providing for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals, has no application to lands within the former Kiowa, Comanche, Apache, and Wichita Reservations, which have been at all times since opened to entry subject to disposition exclusively under nonmineral laws. 47–331

KLAMATH INDIAN LANDS

See INDIAN LANDS, 44–123.

LACHES

See COAL LANDS, 50–318; HOMESTEAD, 49–622; MINING CLAIM, 49–629; OIL GAS, ETC., LANDS, 50–406, 546, 51–38; RAILROAD GRANT, 49–436, 486; SCHOOL LANDS, 48–192.

1. The State of Oregon will be deemed to be in laches and the title of the United States to base lands conveyed by a forest lieu selector indefeasible, upon failure to institute further recovery proceedings within a period of nearly five years after court proceedings instituted by the State to recover the land on the ground that it had been fraudulently acquired from it had been dismissed without prejudice because the United States had not been made a party, notwithstanding that there is no statute of limitations barring actions by the State to recover real property. 50–420

LAKE

See CLAIMS, 49–106; MINERAL LAND, 50–285; NAVIGABLE WATERS, 49–452; OIL, GAS, ETC., LANDS, 48–129; 50–281; PATENT, 50–281; RIPARIAN RIGHTS, 50–180, 281, 284, 285; SURVEY, 48–128; 49–452; 50–381, 679; 51–197.

1. The area occupied by Cross Lake, La., being potentially navigable, although not actually used as a highway of commerce at the time that the State was admitted to the Union, is to be held as navigable on that date, and the title to all of the lands below the mean high-water mark passed to the State upon its admission by virtue of its sovereignty. 50–180

LAND DEPARTMENT

See JURISDICTION, 50–16, 321, 510; NOTICE, 50–409; OFFICERS, 48–215; PATENT, 50–10, 16; 51–45, 63, 403; SECRETARY OF THE INTERIOR, 50–149; SURVEY, 50–381; WITHDRAWAL, 50–231, 289.

1. Instructions of November 29, 1912, designating the holidays on which subordinate offices of the General Land Office may be closed. 41–491

2. The decision of the Secretary of the Interior, in the exercise of judgment and discretion, within the authority conferred by law, respecting the validity of an application to enter

the public lands of the United States, will not be controlled by mandamus. 41–359

3. A decision by the register and receiver, or other proper officers acting in their stead, is more in the nature of a recommendation to the Commissioner of the General Land Office than a judgment, and the commissioner has jurisdiction to render his judgment, subject to review by the Secretary of the Interior, irrespective of or in the absence of such recommendation. 41–295

4. Under the general provisions of law charging the Commissioner of the General Land Office, under the supervision and direction of the Secretary of the Interior, with the public business relating to the public lands, he has full power, in case the register and receiver are deemed by him disqualified to preside at a hearing in a proceeding affecting public lands, to designate two proper officers to preside at such hearing in their stead. 41–295

5. The disqualification imposed by the act of January 11, 1894, upon registers and receivers to sit in a hearing in any cause pending in any local office where such officer is related to any of the parties in interest can not be waived by consent of the parties; and any proceeding had in contravention of the statute is without jurisdiction and void. 41–392

6. The Land Department has no legislative power and must leave to Congress and the courts the rectification of any evils that may flow from its administration of the law. 42–611

7. The primary power of appointment of United States mineral surveyors, and the revocation of such appointments, rest with the surveyor general subject to review by the Commissioner of the General Land Office; and where the surveyor general makes such an appointment it should not be disapproved or rejected except upon charges or grounds therefor being stated, with opportunity to the applicant to answer and for a hearing if desired. 44–153

8. Under section 453 of the United States Revised Statutes, the Land Department of the Government has always held that in matters pertaining to the public domain, authority granted to the Secretary of the Interior may be exercised, in the first instance, by the Commissioner of the General Land Office, subject to the supervisory authority of the Secretary. 46–201

9. The provision in the act of April 30, 1912 (37 Stat. 106), that "the Secretary of the Interior may, in his discretion, in addition to the extension authorized by existing law, grant to any entryman under the desert land laws a further extension of time within which he is required to make final proof," does not preclude the granting of such extension of time by the Commissioner of the General Land Office, subject to the supervisory authority of the Secretary. 46–201

10. In adjudicating cases in connection with presidential withdrawals expressly authorized by Congress and in applying the controlling statutes and authoritative regulations and decisions thereunder, officials of the Land Department can not be properly charged with exercising duress or coercion against claimants. 48–184

11. The department will take cognizance of only the legal sufficiency of the adjudication of decisions brought before it for review, and it will not concern itself with the technical perfection of decisions rendered by the Commissioner of the General Land Office which do not expressly contain the findings involved in the issues, but from the contents of which such findings are to be implied. 49–250

12. The Land Department has jurisdiction over the public lands to afford justice to claimants and to protect equities, and it may award a preference right upon a ground other than that of physical occupancy, unless the claim is asserted under a law requiring settlement. 49–253

13. Rule 51, rules of practice, which declares that decisions of the local officers shall, with certain stated ex-

ceptions, become final upon failure of any party to appeal, did not change the long-established principle that the Commissioner of the General Land Office is not precluded, in the absence of an appeal, from reviewing the decisions of those officers and taking such action as the interests of the Government require; nor did paragraph 13 of the instructions of February 26, 1916, making the rules of practice applicable to appeals thereunder, modify the commissioner's powers and duties in that respect. 49–465

14. Section 2325, Revised Statutes, and the departmental regulations thereunder, requiring the register, upon the filing of a mineral application, to publish notice thereof in a newspaper to be by him designated as published nearest to the land, confers upon that officer discretionary authority in making the designation, and an abuse of that authority will not be imputed where he, through the exercise of his judgment, designates a newspaper of general circulation which, although not published geographically nearest the land, is, by the accessibility, by usually traveled routes, of its place of publication, competent to give the public notice. 49–516

15. In the exercise of its broad powers to do justice, the Land Department should so far as within it lies put an end to controversies involving title to public lands which have been once finally adjudicated by it. 50–10

16. The rules of law as applied by the courts are binding upon the Land Department only in so far as they are not adverse to but assist its functions as an administrative agency of the executive branch of the Government which, as the proprietor of the public domain, is a party to all proceedings relative to the disposal of the public lands, and entitled to rely upon and adhere to their classification, once arrived at, even though between others than the parties to a new application to enter. 50–23

17. It is exclusively within the province of the courts to declare an act of Congress unconstitutional, and, until an act dealing with the public lands is finally determined by the courts to be unconstitutional, it is the duty of the Land Department to administer it as Congress directs. 50–521

LAND DISTRICT

1. Regulations governing entries in more than one land district. (Circular No. 505.) 45–486

LEASE

See Alaska Lands; Coal Lands; Indian Lands; Oil, Gas, etc., Lands; Phosphate Lands; Potash Lands; Saline Lands; Sulphur Lands.

1. Regulations of October 6, 1925, leasing of public lands near or adjacent to mineral, medicinal, or other springs. (Circular No. 1034.) 51–221

LEAVE OF ABSENCE

See Absence, Leave of.

LIEU SELECTION

See Forest Lieu Selection; Railroad Grant, 49–180, 587; Railroad Land, 42–553; School Lands, 52–15, 118, 296, 311, 401; Selection, 49–408.

1. Land containing deposits of granite of quality and in quantity sufficient to render it valuable therefor is mineral land, and not subject to forest lieu selection under the act of June 4, 1897. 42–144

2. The filing of a selection under the act of April 21, 1904, authorizing the selection of public lands in exchange for lands in Indian reservations, constitutes an appropriation of the lands within the meaning of the act of June 20, 1910, making an additional grant of school lands to Arizona, and said latter act therefore furnishes no obstacle to the consummation of such selection pending at the date of its passage. 41–96

3. A lieu selection of land approximately twice the area of the tract tendered as base does not fulfill the requirement contained in the act of April 21, 1904, that the selected and the relinquished lands must be "as nearly as practicable equal in area." 49–161

4. The Land Department may permit the tender of any applicable scrip or right as supplemental to an insufficient base upon which a lieu selection is predicated. 49–162

LICENSES

See Coal Lands, 51–416; Lease.

LIEN

See Indian Lands, 51–613, 614, 91; Reclamation.

LIGHTHOUSE RESERVATION

See Reservation, 50–559.

LIMESTONE

1. The existence of a limestone deposit which is or may be used in construction or surfacing of roads, or as an ingredient in the manufacture of Portland cement, is not sufficient to subject it to mineral location when found in a region containing immense quantities of similar deposits more favorably situated, and not otherwise possessing attributes which would bring it within the category of mineral deposits made subject to location under the mining laws. 47–18

LIVESTOCK

See Right of Way, 44–127.

LOUISIANA

See Lake, 50–180; Riparian Rights, 50–180; Swamp Lands.

MANDAMUS

1. The decision of the Secretary of the Interior, in the exercise of judgment and discretion, within the authority conferred by law, respecting the validity of an application to enter the public lands of the United States, will not be controlled by mandamus. 41–359

2. The general rule is that the courts have no power to interfere with the performance of the Land Department of the Government of the administrative duties devolving upon it. 45–649

3. Upon a petition for mandamus to compel the Secretary of the Interior to accept and approve relator's homestead application, where it appeared that the lands in question were not public lands of the United States when he made his entry (settlement?), but that the State of Florida had a good title to them in fee simple; that the State, for reasons with which the relator was not concerned, quitclaimed the land to the United States and as a part of the same transaction regained title thereto pursuant to a contract between the United States and the State of Florida; *held* that the decision of the Secretary in refusing to accept and approve the entry was right, but whether right or wrong it was a decision of a question involving the public lands of the United States within his exclusive jurisdiction. 45–649

4. The writ of mandamus can not be converted into a writ of error. 45–649

5. Mandamus will not lie to compel the Secretary of the Interior to issue to the relators a patent for coal land which they entered when it was still unreserved, unsurveyed, and unclassified public land, although after its classification as coal land and appraisal they applied to purchase it and conformed to the requirements of sections 2347 and 2348, United States Revised Statutes, Compiled Statutes, 1913, sections 4659, 4660, which permit the entry of coal lands upon payment of prices per acre therein specified and give a preferential right of entry to

persons who have opened and improved, and shall thereafter open and improve, any coal mine upon such lands, and shall be in actual possession of the same, where the Secretary's refusal to issue a patent to the relators was based upon the ground that not having opened a mine on the land until after its classification and appraisal, they would have to pay the appraised price of the land, and not the price fixed by the statute. 46–191

MARRIAGE

See CITIZENSHIP, 48–66; 49–316; 50–205; HOMESTEAD, IV, V; INDIAN LANDS, 50–551; MARRIED WOMAN; OFFICERS, 50–649; RESIDENCE, 48–154.

1. Paragraph 6 of the regulations of June 6, 1914 (43 L. D. 272), under the act of April 6, 1914, modified. 47–9

2. Instructions of April 8, 1919. Intermarriage of homesteaders. (Circular 330.) 47–116

3. The marriage of a homestead entrywoman to a settler on lands not subject to entry because unsurveyed is not within the scope of the act of April 6, 1914 (38 Stat. 312), which requires, among other things, that both parties shall have made entries. 46–167

4. A homestead settler who has not made entry of the land settled upon is not entitled to the benefits of the act of April 6, 1914 (38 Stat. 312), which, by its terms, has application only where there has been "the marriage of a homestead entryman to a homestead entrywoman." 46–231

5. The provisions of the act of April 6, 1914, relating to the rights of homesteaders who intermarry, does not require that the parties must have fulfilled the requirements of the homestead law for one year after making entry, but "for one year next preceding such marriage," and credit may properly be claimed for residence and cultivation performed prior to date of entry where the land was subject to settlement. 46–481

6. The affidavits required by the departmental regulations issued under the provisions of the act of April 6, 1914, relative to the privilege of election as to residence of homesteaders who intermarry, may be executed before a notary public. 46–484

7. The right of election under the provisions of the act of April 6, 1914, is one which accrues at the date of marriage by operation of law and is not dependent on the filing of a formal declaration that it has been made, that being a requirement of regulation and not of statute; and election to reside upon the land embraced in the husband's entry having in fact been made, failure to file such a declaration prior to his offer of final proof and receipt of final certificate does not warrant the rejection of the declaration. 47–9

8. The election requirement contained in the act of April 6, 1914, as modified by the act of March 1, 1921, to the effect that both parties must have complied with the homestead law for one year next preceding marriage, is satisfied with respect to the husband, if he had, for a period of one year prior to marriage, resided upon land covered by his application to make a stock-raising homestead entry which was subsequently allowed, notwithstanding the fact that credit can not be given for such residence in the submission of final proof. 48–141

9. The amendatory act of March 1, 1921, which extended the provisions of the act of April 6, 1914, to permit homesteaders who intermarry to perfect under certain conditions settlement claims as well as entries of record at the time of marriage, is to be construed in connection with the adjudication of pending claims of homesteaders who intermarried prior to the enactment of the amendment as though it were incorporated in the original act. 48–328

MARRIED WOMAN

See CITIZENSHIP; HOMESTEAD, IV, V; RECLAMATION, 41–422, 428; 42–528; 43–364.

1. Instructions of November 4, 1914, under act of October 17, 1914, concerning marriage of a female citizen, a public-land claimant, to an alien. 43–444

2. Instructions of March 22, 1920; allotment applications by married Indian women. (Circular No. 675.) 47–345

3. A homestead application, accompanied by the required payment, filed by a single woman, for lands subject to entry, which has been suspended to await the determination of her qualifications, is, to all intents and purposes, an entry upon ascertainment that at the time of filing the application she was qualified under the law, and her marriage subsequently to such filing does not affect any of her rights under the application. 49–311

MEANDER LINES

See MINING CLAIMS, 45–330, 331; SURVEY, 45–330; 47–72.

MEDICINAL SPRINGS

See LEASE, 51–221.

MENOMINEE LANDS

See INDIAN LANDS, 50–551.

MEXICAN GRANTS

See PRIVATE CLAIMS, 51–591; SCHOOL LANDS, 42–269.

1. The line established by an approved Government survey of a Mexican private land grant, made in pursuance of section 3 of the act of March 3, 1869 (15 Stat., 342), and long acquiesced in, will be deemed the boundary of the grant. 46–301

2. One of the boundaries of a Mexican private land grant was the line of a mountain range. The grant was later surveyed by the United States, and it was subsequently alleged that as to the summit line of said range a variance existed between the survey and the summit as it exists upon the ground. *Held*, That in such case the line established by the Government survey controls, and will not be disturbed. 46–301

MILITARY BOUNTY LAND WARRANT

See WARRANT.

MILITARY RESERVATION

See FORT ASSINNIBOINE LANDS, 50–276, 586; ISOLATED TRACTS, 48–297; RESERVATION, 43–33, 225, 290, 283, 422.

1. Instructions of June 19, 1914, concerning lands in Fort Niobrara abandoned military reservation. 43–283

2. Instructions of October 16, 1914, under act of August 27, 1914, governing disposal of Fort Bridger lands. 43–422

3. Abandoned military reservations in Nevada. 45–492

4. Instructions of January 19, 1918 (Circular No. 585), regarding payments on entries in abandoned military reservations, made by persons in the military or naval service. 46–279

5. Instructions of March 24, 1921, relative to allotment under section 4 of the act of February 8, 1887, on Camp McGarry abandoned military reservation. 48–41

6. Instructions of April 29, 1921; disposal of lands in Gig Harbor abandoned military reservation. (Circular No. 752.) 48–100

7. Instructions of November 8, 1921, relative to isolated tracts on abandoned Fort Buford military reservation. 48–297

8. Instructions of February 6, 1922; abandoned Fort Sabine military reservation. (Circular No. 806.) 48–432

9. Instructions of March 11, 1921; Fort Assinniboine lands, extension of time for payment. (Pub. Res. No. 292, 41 Stat. 1086.) 48–35

10. Lands in an abandoned military reservation included within a national forest are subject to listing and entry under the act of June 11, 1906, without regard to the act of July 5, 1884, providing for the appraisal and sale of lands in abandoned military reservations. 43–33

11. Lands formerly embraced within the Fort Fetterman military reservation, opened under the act of July 10, 1890, to disposal under the homestead laws only, are subject to appropriation under section 2306, Revised Statutes, by location of soldiers' additional rights. 43–225

12. Where persons were permitted in good faith to purchase lands, bearing valuable live oak and pine timber, reserved under authority of Congress for the United States Navy, and cash certificates of entry were issued to them therefor, such entries should not be disturbed, where the Navy Department has no present use for the lands on account of their valuable timber, but should be permitted to remain intact until such time as Congress shall take action in the matter. 43–290

13. A selection by the State of North Dakota under the act of March 2, 1907, in lieu of lands embraced in a homestead entry erroneously allowed for part of a school section in the Fort Rice abandoned military reservation which had passed to the State, constitutes a waiver of all right of the State to the lands assigned as base, and no rights under the school grant reattach to said lands in event of cancellation of the homestead entry. 44–390

14. Commutation of a homestead entry of lands within an abandoned military reservation, made under the act of August 23, 1894, can be allowed only upon full payment of the appraised value of the land. 44–485

15. Lands temporarily withdrawn from settlement and all forms of disposal for use by the War Department in connection with the construction through said lands of the military road to Fort Bayard, are not "included within the limits of a military reservation" within the meaning of the act of July 5, 1884; and when such withdrawal is vacated and the lands restored to the public domain they are not subject to disposition thereunder. 47–141

16. The qualification of a homesteader on the abandoned Fort Laramie wood reservation to purchase under the act of May 31, 1902, not exceeding one quarter section of pasture or grazing land within that reservation on the condition that the aggregate area of the lands previously entered, together with the lands sought to be purchased, shall not exceed 320 acres, is to be determined as of the date of the filing of the purchase application. 48–321

17. The right of an applicant, qualified at the date of the filing of his application, to perfect the purchase of pasture or grazing land within the abandoned Fort Laramie wood reservation under the act of May 31, 1902, is not vitiated by subsequently making an additional entry under section 3 of the enlarged homestead act, even though the applicant may have exceeded his rights by making the additional entry in acquiring more than 320 acres under the public land laws. 48–321

MILITARY SERVICE

See CITIZENSHIP, 48–287; 49–429; CONTEST, 49–318, 617; HOMESTEAD, XI, XII; PREFERENCE RIGHT, 48–507; 49–111.

1. The provisions of section 2305, Revised Statutes, are applicable to entries under section 6 of the enlarged homestead acts. 44–504

2. Instructions of April 6, 1917, under act of June 16, 1898, in connection with stock-raising homesteads. 46–74

3. Instructions of August 22, 1917, regarding military service by homesteaders during war with Germany. (Circular No. 564.) 46–174

4. Regulations of November 20, 1917 (Circular No. 574), regarding installment payments on entries of ceded Indian lands by persons in the military service. 46–239

5. Instructions of January 19, 1918 (Circular No. 585), regarding payments on entries in abandoned military reservations made by persons in the military or naval service. 46–279

6. Regulations of February 18, 1918 (Circular No. 590), regarding military service of desert-land entrymen during war with Germany. 46–294

7. Instructions of April 2, 1918, regarding installment payments on entries of ceded Indian lands by persons in military service. 46–343

8. Regulations of April 2, 1918, regarding payment of water-right charges on reclamation entries by persons in military service. 46–343

9. Regulations of May 16, 1918, regarding rights of soldiers and sailors in connection with public lands under civil rights act. (Circular No. 600.) 46–383

10. Instructions relative to entries by soldiers under 21 years of age. (Circular No. 622.) 46–451

11. Instructions of April 25, 1919, relative to military service on Mexican border and during war with Germany. (Circular No. 641.) 47–128

12. Instructions of June 4, 1919, relative to credit for military service. (Circular No. 646.) 47–151

13. Instructions of May 16, 1919, regarding payment of water-right charges by entrymen in military service. 47–167

14. Instructions of June 9, 1919, regarding installment payments required on homestead and other entries after period of military service. (Circular No. 647.) 47–191

15. Instructions of September 10, 1919, relative to time for return to homesteads by discharged soldiers and sailors. (Circular No. 656.) 47–257

16. Instructions of October 8, 1919; absence during course of vocational rehabilitation; act of September 29, 1919. (Circular No. 657.) 47–283

17. Regulations of March 31, 1920; disposition under Public Resolution No. 29, of February 14, 1920, of applications filed by discharged soldiers, etc. (Circular No. 678.) 47–346

18. Instructions of April 2, 1921; proofs on homesteads by incapacitated soldiers, etc., act of March 4, 1921. 48–54

19. Instructions of April 16, 1921; termination of the war with Germany, under Public Resolution No. 64 (41 Stat. 1359). (Circular No. 750.) 48–78

20. Instructions of August 2, 1921, relative to the amendment of defective contest affidavits in relation to military service. 48–166

21. Instructions of November 18, 1921, relative to showing as to military service; preference right, act of February 14, 1920. (Circular No. 791.) 48–302

22. Instructions of February 3, 1922; proofs on desert-land entries by incapacitated soldiers; act of December 15, 1921. (Circular No. 805.) 48–427

23. Instructions of April 29, 1922; military service; credit for period of hospitalization under the act of April 6, 1922. (Circular No. 821.) 48–650

24. Instructions of May 1, 1922, preference rights accorded to discharged soldiers, sailors, and marines, act of January 21, 1922; Circular No. 678 superseded. (Circular No. 822.) 49–1

25. Instructions of November 21, 1924, proofs by incapacitated soldiers upon claims initiated under the desert land laws, act of December 15, 1921. (Circular No. 805, revised.) 50–674

26. Under the terms of section 1 of the act of July 28, 1917 (40 Stat., 248), a contest against a homestead entry upon the ground of failure to timely establish residence must fail where the entryman has in time of war entered the military or naval service of the United States prior to the service of contest notice. 46–297

27. The benefits of the act of July 28, 1917, are conferred upon bona fide settlers and homestead entrymen whose absence from the land is due

to enlistment in the military or naval service of the United States, and those engaged in other war activities, however worthy, are not within the purview of that act. 46–448

28. The benefits of the act of July 28, 1917, are conferred only upon those settlers and homestead entrymen who initiated homestead claims, by filing applications or making settlements on public land, prior to entering the military or naval service. 48–56

29. The protection afforded by the act of July 28, 1917, to those in the military or naval service of the United States, whose entries became subject of attack by contest on the ground of abandonment, covers only the period of such service, and after discharge the homestead laws must be complied with by them, unless excepted by special statutory provisions, to the same extent as by those not within the class protected by that act. 48–548

30. The act of July 28, 1917, allowing credit for military service, does not excuse either the placing of a habitable house upon an entry made under the act of June 6, 1912, or under the act of February 19, 1909, or the required permanent improvements upon a stock-raising homestead entry. 48–107

31. The act of July 28, 1917, makes military or naval service during time of war by one who had previously made a homestead entry equivalent to the establishment and maintenance of residence for the period thereof, and where such entryman, upon his discharge, lawfully obtains leave of absence, an application to contest on the ground of abandonment will not be entertained until after the lapse of six months from the expiration of such leave. 49–514

32. The act of July 28, 1917, allowing credit for military service does not waive the residence and cultivation requirements of the statute; it merely reduces them. 48–107

33. A homestead entryman, who after making entry, enlisted or was actually engaged in the military or naval service of the United States during the war against Germany, and who after discharge is furnished a course of vocational rehabilitation, is entitled to credit under the acts of July 28, 1917, and September 29, 1919, for residence to the extent of the combined periods of his service and of his vocational training; but he must fulfil the requirements of the homestead law as to residence and cultivation for a period of at least one year. 48–203

34. Attendants at officers' training camps during the recent war with Germany were not a part of the Military Establishment of the United States, and time spent therein was not such "military service" within the purview of the act of July 28, 1917, as entitles one to credit for residence under the homestead laws. 48–204

35. The provisions of the act of March 8, 1918, relieving public-land claimants from the penalty of forfeiture for failure to do any act required by the law under which their claims were made, during the period of their military service, do not accord protection in cases where the failure to comply with law occurred prior to entry into the military service and was established at a hearing at which claimant appeared and was afforded due opportunity to offer defense. 46–488

36. Credit for military service rendered the United States in the Civil War is allowed on entries made under the enlarged homestead acts. 46–115

37. Time served as paymaster's clerk in the United States Army during the War with Spain or the suppression of the Philippine Insurrection is military service within the purview of sections 2304 and 2305, Revised Statutes, for which credit is allowable in lieu of homestead residence. 51–149

38. A deserted wife who submits proof upon a homestead entry in accordance with the provisions of the act of October 22, 1914, is entitled to claim credit, in lieu of residence, for the military or naval service of her husband. 51–189

39. The requirement of section 2305, Revised Statutes, as to at least one year's residence on the land by a soldier or sailor entitled to credit for military service, is satisfied by seven months' actual and five months' constructive residence thereon. 46–115

40. Credit for military service can not be allowed in fulfillment of the one-year period of residence required by the act of April 6, 1914, which provides that upon the intermarriage of a homestead entryman and a homestead entrywoman "after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage," they may carry both entries to completion in the manner provided by that act. 47–243

41. The act of March 8, 1918, relieving public-land claimants from penalty of forfeiture for failure to perform any material acts required by the law under which the claims were asserted during the period of their military service, is sufficiently broad to include a preference right of entry resulting from a contest initiated prior to entering the service; and such right is not forfeited or prejudiced by reason of a successful contestant's failure to exercise it within the statutory period occurring during said military service. 47–301

42. The act of March 8, 1918, relieving public-land claimants from penalty for forfeiture for failure to perform any material acts required by law under which the claims were asserted, during the period of their military service, suspends the running of the time within which preference right must be exercised, where a successful contestant enters the military service prior to the expiration of the preference right period, without having exercised his right; but the time commences to run again immediately upon his discharge. 48–39

43. The act of February 25, 1920, does not award any preference right for military or naval service, and preferential consideration can not be given to applicants, as ex-service men with honorable discharges, in the granting of coal-land leases thereunder. 48–122

44. In fulfilling the one-year minimum residence requirement under the act of July 28, 1917, a soldier is entitled to the same absence privilege as is enjoyed by other entrymen under the general homestead laws, and the period of absence from a stock-raising homestead entry under authority of the so-called drought act of July 24, 1919, may be credited in making up the aggregate of one year required by law. 48–125

45. While the Land Department, in order to further safeguard the interests of those protected by the military service statutes, has refused to entertain all contests based upon the charge of abandonment during the periods covered thereby, in the absence of an allegation that the default was not due to such service, yet that practice need not have controlling weight where, a contest having been entertained, it is clearly shown that the entryman was not of the class protected by the law. 48–181

46. There is no law under which service in the Regular Army in time of peace excuses or constitutes compliance with the homestead law, nor does one who, after making homestead entry, enlists in the Regular Army for such service, come within the class contemplated by Public Resolution No. 32, act of August 29, 1916, and an entry which has been canceled because of failure to make settlement will not be reinstated to the prejudice of a third party who has entered the land and complied with the law. 48–181

47. A homestead settler or entryman who, after settlement or entry and prior to November 11, 1918, enlisted or was actually engaged in the United States Army, Navy, or Marine Corps during the war with Germany, and has been honorably discharged, is by the act of March 1, 1921, entitled to make proof without further residence, improvement, or cultivation and

to receive patent, if, because of physical incapacities due to service, he is unable to return to the land. 48–207

48. In applying credit for military service in connection with final proofs on homestead entries, such credit is to be accepted as constructive residence and cultivation for the third year of the entry where the entryman is entitled to one year for service, and for the second and third years where he is entitled to two years for service. 48–236

49. The period of service for which credit may be claimed upon the submission of final proof under section 2305, Revised Statutes, by a member of the Naval Reserve Force or of the Federalized National Guard, who was called into active service during the Mexican border operations or during the war with Germany, terminates upon the date of his discharge, and not upon the date that he was ordered to inactive duty. 49–402

50. The act of March 1, 1921, which amended section 2294, Revised Statutes, by permitting incapacitated discharged soldiers, sailors, and marines of the United States who served during the war with Germany to submit proofs upon homestead entries initiated by them prior to November 11, 1918, outside of the land district or county in which the lands are located, did not contemplate making any relaxation of the previously existing law with reference to the execution of initial applications to make entry. 49–620

51. Military service is not recognized by the act of February 25, 1920, as a ground for the award of a preference right to an oil and gas prospecting permit. 50–413

52. The right of a veteran to refund under the act of February 21, 1925, of charges paid by him on a reclamation homestead entry which he relinquishes prior to receipt of final certificate and within one year after the passage of the act is not defeated by action of the Government in canceling the entry, for sufficient reasons, independently of the relinquishment. 51–329

53. The preference right granted by section 8 of the stock-raising homestead act of December 29, 1916, is one of the "preference rights conferred by existing laws" expressly excepted from the operation of the joint resolution of February 14, 1920, as amended by the joint resolution of January 21, 1922, which granted preference right of entry to ex-service men of the war with Germany. 51–452

MILL SITE

See Mining Claim, XII.

MILLE LAC LANDS, MINNESOTA

See Railroad Grant, 49–391.

MINERAL LAND

See Coal Lands, 46–131; 48–443; 51–436, 477; Homestead, 45–110; 48–280; 49–608; 50–288; 51–1, 477; Indemnity, 50–20, 528, 668; Indian Lands, 47–261, 331; 49–139, 166; 50–672; 51–98; Mining Claim; Oil, Gas, etc., Lands, 48–126, 237, 281; Oregon and California Railroad Lands, 48–429, 431; Patent, 45–501; 50–192, 623; 51–229, 403, 477; Phosphate Lands; Potash Lands; Railroad Grant, IV; Railroad Lands, 46–1, 4, 435; 49–250; Saline Lands; School Lands; Swamp Lands, 46–389; 48–201; 51–316; Withdrawal, 41–345; 46–17, 468; 47–329; 48–18, 281; 50–688.

1. Regulations of March 27, 1916, concerning mineral lands on Papago Indian Reservation. 45–537

2. Instructions of December 5, 1916, concerning notice of applications for mineral lands on Papago Indian Reservation. 45–539, 540

3. Regulations of September 16, 1919, relative to prospecting for and mining of metalliferous minerals on unallotted Indian lands; act of June 30, 1919. 47–261

4. General mining circular of April 11, 1922. (Circular No. 430.) 49–15

5. Instructions of June 18, 1924, amending paragraph 89 of the mining regulations, Circular No. 430, pertaining to the form of notice to be published with applications for mineral patents. (Circular No. 943.) 50–556

6. Instructions of April 7, 1925, United States mining laws; paragraph 60, Circular No. 430, amended. (Circular No. 995.) 51–111

7. The Land Department retains jurisdiction to consider and determine the character of land claimed under the mining laws until deprived thereof by issuance of patent; and an adjudication that land is mineral does not preclude subsequent investigation by the Land Department as to its character. 41–520

8. The reservation of mineral lands in the Oregon donation acts of September 27, 1850, and February 14, 1853, was in effect such a reservation of lands of that character as to bring them within the class of lands "reserved" and excepted from the operation of the swamp-land grant to that State by the proviso to section 1 of the act of March 12, 1860. 51–316

9. Mineral lands in the State of Minnesota have never been subject to the operation of the mining laws and inasmuch as the act of March 12, 1860, which extended the swamp-land grant to that State, contained no reservation of minerals, mineral lands were not excepted from the grant. 51–316

10. In determining whether land claimed by a State under a public-land grant was known to be mineral at or before the date that its rights would have otherwise attached, evidence that no mineral was mined or shipped and that there was no market therefor at that time is not conclusive as establishing that the land was not then valuable for its minerals. 51–433

11. Relinquishment of a homestead entry as to a part of a 40-acre legal subdivision, on the ground that it is mineral in character, will not be accepted unless the mineral character of the tract sought to be relinquished is shown to have been established in accordance with the requirements of paragraph (c) of section 37 of the general mining regulations of March 29, 1909. 41–132

12. Lands, although containing deposits of mineral, will be considered as nonmineral in character, where the cost of extracting is shown to be so large that a prudent man would not be warranted in expending his time and money thereupon in the reasonable expectation of success in developing a paying mine. 51–605

13. Land of little value for agricultural purposes, but which contains extensive deposits of finely divided pumice or volcanic ash, suitable for use in the manufacture of roofing materials and abrasive soaps, and having a positive commercial value for such purposes, is mineral land and not subject to disposition under the agricultural laws. 41–584

14. The mere fact that land contains deposits of ordinary clay, or of limestone, is not in itself sufficient to bring it within the class of mineral lands and thereby exclude it from homestead or other agricultural entry, even though some slight use may be made commercially of such deposits. There may, however, be deposits of clay or limestone of such exceptional nature as to warrant the classification of the lands containing them as mineral lands. 41–314

15. The fact that an entryman under a nonmineral public land law is so inexpert as to be unable to recognize existing mineral deposits upon the land, does not warrant the United States in permitting him to take mineral land under a nonmineral entry; and it is not necessary in order to declare a tract mineral in character that personal knowledge of the existence of the mineral deposits be brought home to the entryman, if the presence of minerals be demonstrated. 41–639

16. Land containing deposits of granite of quality and in quantity sufficient to render it valuable therefor is mineral land. 42–144

17. A deposit of shell rock, used for building purposes, construction of roads and streets and the foundations of houses, is not a mineral within the meaning of the general mining laws. 42–401

18. While a judgment on default in favor of the mineral claimant, in a proceeding between a mineral and an agricultural claimant involving the character of the land in dispute, renders the question as to the character of the land *res judicata* as between the parties, it will not be accepted as establishing the character of the land as between the Government and the mineral claimant, and constitutes no bar to further inquiry as to the character of the land involved. 43–502

19. Lands containing mineral of such quantity and value as to warrant a prudent man in the expenditure of his time and money with a reasonable expectation of developing a paying mine, are disposable *only* under the mining laws, notwithstanding they may possess a possible or probable greater value for other purposes; but by the act of August 24, 1912, lands withdrawn under the act of June 25, 1910, are open to location and acquisition under the mining laws only so far as the same apply to metalliferous minerals. 43–248

20. Lands containing a deposit of beauxite, carrying alumina, or aluminum oxide, but not in sufficient quantities to make them commercially valuable for the alumina contained therein, according to any known process of extracting the mineral, are not thereby excluded from appropriation under the desert land laws. 44–217

21. Fossil remains of dinosaurs and other prehistoric animals are not mineral within the meaning of the United States mining laws, and lands containing such remains are not subject to entry under such laws. 44–325

22. A withdrawal of land for inclusion in a petroleum reserve, based upon an examination and report of its mineral character, establishes *prima facie* its character as mineral, and one thereafter seeking classification of the land as nonmineral assumes the burden of proof to overcome such *prima facie* established mineral character. 45–464

23. Where a homestead entry is allowed upon proper showing, including satisfactory evidence of the nonmineral character of the land, and protest is later made against such entry, alleging that the land is mineral in character, the burden of proof is upon the protestant. 46–85

24. Upon the state of facts set forth in the preceding paragraph, the rule announced in Central Pacific Railway Co. (43 L. D. 545), that the burden is upon the grantee under a grant in aid of the construction of a railroad, to show, by clear and convincing evidence, that the land involved is of a character subject to the grant, is not applicable. Cases of Sarah Frazier (41 L. D. 513) and Henry Hildreth (45 L. D. 464, and 46 L. D. 17) distinguished. 46–85

25. In a proceeding against a railroad selection alleging the existence of mineral upon the land embraced therein, the company is not required to introduce its evidence in advance of a showing by the Government in support of its charges. 46–435

26. The existence of a limestone deposit which is or may be used in construction or surfacing of roads, or as an ingredient in the manufacture of Portland cement, is not sufficient to subject it to mineral location when found in a region containing immense quantities of similar deposits more favorably situated, and not otherwise possessing attributes which would bring it within the category of mineral deposits made subject to location under the mining laws. 47–18

27. Oil shale having been recognized by both the department and Congress

as a mineral deposit and a source of petroleum, and having been demonstrated elsewhere to be a material of economic importance, lands valuable on account thereof must be held to be subject to valid location and appropriation under the placer-mining laws to the same extent and subject to the same provisions and conditions as if valuable on account of oil or gas. 47–548

28. As coal is not a "metalliferous mineral," the provision of the act of June 25, 1910, as amended August 24, 1912, that lands withdrawn thereunder "shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals," does not authorize the allowance of a coal entry for land so withdrawn. 47–329

29. While the act of June 4, 1897, provides that mineral lands in any forest reservation shall continue to be open to location and entry under the mining laws, yet this does not prevent withdrawal or reservation from any and all form of private appropriation, and devotion of the land to public use. 47–329

30. Section 2319, Revised Statutes, proclaimed that all valuable mineral deposits in the public lands were free and open to exploration and purchase, and classification or designation of lands as mineral by the Land Department was not a prerequisite to the right to make a mining location. 48–5

31. The act of July 17, 1914, did not repeal the provisions of the mining laws, and after the passage of said act, lands of the open public domain containing the minerals named therein, not covered by Executive withdrawals or reservations, were subject to exploitation and location under the same conditions as theretofore. 48–5

32. The term "such deposits," as used in section 2 of the act of July 17, 1914, has reference only to those deposits that are reserved in a nonmineral patent issued pursuant to that act and not to all deposits of the named minerals wherever found upon the public domain. 48–6

33. Since title to known mineral lands can not be earned or secured under the homestead laws, section 2302, Revised Statutes, section 3 of the act of July 17, 1914, is applicable to entries made prior to the date of the act for the reason that it is not vested before withdrawal or discovery of mineral, and said section is not void because broader than the title to the act, where equitable title has not required that the title to an act of Congress shall indicate the scope of the statute. 48–18

34. Lands within the forfeited grant to the Oregon & California Railroad Co., that have been classified as "power site lands" under the authority conferred by section 2 of the act of June 9, 1916, and included within a power site reserve by Executive order issued pursuant to the act of June 25, 1910, as amended by the act of August 24, 1912, are open to exploration, discovery, and purchase under the United States mining laws only so far as those laws apply to metalliferous minerals, and are not, therefore, subject to location of a claim based upon discovery of deposits of fire clay or kaolin. 48–429

35. An attempted location of a mining claim for lands within the forfeited grant to the Oregon & California Railroad Co., prior to their classification, but which were later classified as "power site lands" under the authority conferred by section 2 of the act of June 9, 1916, is void *ab initio* and no rights are acquired thereby which prevent a subsequent withdrawal of the lands for water-power purposes. 48–431

36. A railroad company having a right of way over mineral lands is entitled to the support of its easement, roadbed, and rolling stock, and the right to take ore underneath the surface thereof must yield, if, in order to take it, the support of the roadbed will be impaired. 48–443

37. In expressly excluding mineral lands from the grant to the Northern Pacific Railroad Co. by the proviso to section 3 of the act of July 2, 1864, Congress contemplated that mineral lands, in the absence of special provisions to the contrary, should be considered as entireties or as a single estate; and the act of July 17, 1914, did not expressly or by implication modify or enlarge the provisions of the grant so as to permit of the selection of the surface of oil lands as indemnity. 48–573

38. The relation between a mineral survey and a conflicting public land survey is sufficiently shown by the tie of the mining claim to one of the corners of the public land survey and by the courses and distances given in the respective surveys. 48–616

39. A department regulation declaring that a report by the Geological Survey that land covered by an unperfected nonmineral entry without a reservation of the oil and gas content has a prospective value for oil and gas, impresses the land with a *prima facie* mineral character sufficient to require the entryman to consent to a reservation of the minerals or to assume the burden of proof and show that the land is in fact nonmineral, carries out the intent of Congress as expressed in the act of July 17, 1914, and is valid. 50–277

40. The rule that the known mineral character of public lands which have not been reported, withdrawn, or classified as mineral, must be determined as of the time when the claimant has completely fulfilled the requirements of the law under which he claims, in order that mineral deposits may be reserved to the United States, is as applicable to lands in lake beds which the Government knows will pass to the riparian proprietor as appurtenant to the upland, as it is to the upland itself. 50–285

41. In the second proviso to section 21, and in section 37 of the act of February 25, 1920, Congress expressly recognized oil shale to be a mineral deposit that was subject to location and patent under the mining laws. 50–323

42. Lands that were known to be chiefly valuable for their deposits of oil shale at and prior to the acceptance of the Government survey thereof were known mineral lands at that time and were, therefore, excepted from the grant to the State of Utah for school purposes. 50–323

43. Only where the United States has indicated that mineral lands are held for disposal under the land laws does section 2319, Revised Statutes, apply, and it is never applicable where the United States directs that the disposal be only under other laws. 50–687

MINERAL SPRINGS

See LEASE, 51–221.

MINERAL SURVEYOR

See LAND DEPARTMENT, 44–153.

MINING CLAIM

See COAL LANDS, 51–119, 424, 436, 437; INDIAN LANDS, 49–420, 421, 424, 425; MILL SITE; MINERAL LANDS; OIL, GAS, ETC. LANDS; PATENT, 45–501; 50–262; PHOSPHATE LANDS; REPAYMENT, 50–576, 599.

I. Generally

1. Paragraphs 33 and 88 of general regulations amended. 41–77, 354

2. General regulations of March 29, 1909, reapproved November 6, 1912, and reprinted in pamphlet form, with amendments. 41–396

3. Paragraph 89 of mining regulations amended. 42–204, 541

4. Instructions of September 24, 1914, under act of August 25, 1914, concerning disposition of oil and gas in mining claims pending determination of title. 43–404

5. General mining circular of August 6, 1915. 44–247

6. Regulations of April 9, 1915, concerning amendment of paragraphs 49 and 85 of mining regulations. 44–53

7. Instructions of November 10, 1916, concerning locations on Shoshone or Wind River lands. 45–533

8. Instructions of July 14, 1917, amending paragraph 108 of mining regulations and repealing paragraphs 109 and 110. 46–161

9. Instructions of November 4, 1925, showings by applicants for placer patents. 51–265

10. The fact that an entryman under a nonmineral public-land law is so inexpert as to be unable to recognize existing mineral deposits upon the land, does not warrant the United States in permitting him to take mineral land under a nonmineral entry; and it is not necessary, in order to declare a tract mineral in character, that personal knowledge of the existence of the mineral deposits be brought home to the entryman, if the presence of minerals be demonstrated. 41–639

11. It is not necessary to entitle a mining claimant to patent under section 2332, Revised Statutes, that such claimant shall personally have been in adverse possession of the claim for the period fixed by that section; it is sufficient thereunder that the claimant and his grantors shall have held and worked the claim for such period. 41–653

12. It is the purpose of the mining laws to reserve from disposition and to devote to mineral sale and exploitation only such lands as possess mineral deposits of special or peculiar value in trade, commerce, manufacture, science, or the arts. 41–655

13. Land embraced in a subsisting patent issued upon a timber and stone entry is not subject to location and entry under the mining laws, notwithstanding the land was embraced in a valid subsisting mining location at the date of the timber and stone entry and was at that date known to be chiefly valuable for mineral. 42–481

14. The banks and beds of nonnavigable unmeandered streams, upon lands belonging to the United States, containing valuable mineral deposits, may be included in locations and entries under the mining laws. 43–248

15. The general mining laws are operative with respect to deposits of gold within the limits of national forests or power-site withdrawals the same as with respect to like deposits elsewhere on the public domain. 43–248

16. The provisions in the acts of May 14, 1898, and March 3, 1903, extending the homestead laws to the Territory of Alaska, that no entry shall be allowed extending more than 160 rods along the shore of any navigable water, and that along such shore a space of at least 80 rods shall be reserved from entry between claims, have no application to mining claims asserted under the general mining laws as extended to Alaska. 43–120

17. Lands containing mineral of such quantity and value as to warrant a prudent man in the expenditure of his time and money with a reasonable expectation of developing a paying mine, are disposable *only* under the mining laws, notwithstanding they may possess a possible or probable greater value for other purposes; but by the act of August 24, 1912, lands withdrawn under the act of June 25, 1910, are open to location and acquisition under the mining laws only so far as the same apply to metalliferous minerals. 43–248

18. An order of withdrawal has the same force and effect as an adverse claim asserted by any qualified person; and if a claim within a withdrawn area would have been subject to peaceable entry by an adverse claimant, because of lack of diligence on the part of the prospector, it would be defeated by the order of withdrawal. 44–420

19. An oil and gas mining location, unperfected at the date of the passage of the act of February 25, 1920, can

not be perfected pursuant to the exception clause in section 37 of that act, unless the requirements of section 2324, Revised Statutes, relating to the performance of annual assessment work, are thereafter fulfilled. 51–101

20. By virtue of sections 2327 and 2372, Revised Statutes, a mineral entry in error because of erroneous description may be cured even after patent upon surrender of the outstanding instrument and the relinquishment of title thereunder, and a corrected patent issued containing an accurate description of the ground actually staked and monumented under the original patent survey. 44–173

21. Where exclusions are made from mining claims of supposed conflicts with a prior patented claim, and the position of the prior patented claim as actually marked, defined and established upon the ground, is not identical with its position as represented upon the plat and described in the field notes of survey, and the supposed conflicts have no existence in fact, the areas represented by such theoretical exclusions pass under the patents to the claims, and are therefore not subject to appropriation by subsequent location. 45–10

22. A single application for patent or entry under the United States mining laws may not include incontiguous mining claims or locations, and the location of a mill site on ground between mining claims will not establish the necessary contiguity. 51–123

23. Where entry has been made for a group of mining claims, patent can not issue thereon for individual claims, noncontiguous to each other, where there has been no discovery upon the intervening claims upon which they depend for their contiguity; but the entry may be permitted to stand and patent issued for the particular claim upon which the notice and plat were actually posted, provided a valid discovery and sufficient improvements were made thereon. 45–501

24. The rule of property adopted in Rough Rider and Other Lode Mining Claims (42 L. D. 584) does not apply to mining locations made after the decision of January 31, 1911, in Rough Rider and Other Lode Claims (41 L. D. 242). 46–85

25. The Land Department has full authority to inquire into and determine the validity of mining locations in national forests, notwithstanding the locators have not applied for patent. 46–20

26. A valid mining claim under the public land laws is property which may be bought and sold and which passes by descent. 46–195

27. Even after judgment of the court in a proceeding by an adverse claimant to a mining claim, under section 2326, Revised Statutes (Comp. Stat., 1913, sec. 4623), on the question of the right of possession, the Land Department may pass upon the sufficiency of the proofs to ascertain the character of the land and determine whether the conditions of the law have been complied with in good faith. 46–195

28. The Secretary of the Interior and the Commissioner of the General Land Office will not be enjoined, in a suit in equity by the locator of an unpatented mining claim who states that he is satisfied and does not and may never desire a patent, from proceeding to determine the character of the claim. (Construing secs. 2318 to 2348, Rev. Stat.; Comp. Stat., 1913, secs. 4613–4660.) 46–195

29. A mineral entry based on a mining claim located for carnotite upon land included in a petroleum withdrawal can not stand. 46–468

30. A mineral claimant of land included in a town site patent is entitled, upon applying for a mineral patent, to a hearing as to the character of the land, where he makes *prima facie* showing that, at the date of the town site entry, such land was known to be mineral or was held under valid mineral location. 47–25

31. The mere fact that a tract of the public domain is covered by a mining location does not deprive the Land Department of its jurisdiction and authority, until issuance of patent, to investigate and adjudicate the facts establishing the character of the land, or the status of any claim asserted thereto under the public-land laws. 47–169

32. It is the peculiar function and duty of the Land Department to investigate and determine controversies involving the character of land arising between mineral locators and agricultural claimants preliminary to the issuance of patent, and in such cases the intervention of a local court is useless, except to preserve the *status quo* or to protect the property. 47–169

33. The Land Department, as a specially constituted tribunal, has jurisdiction to determine in accordance with the facts and the appropriate law, after due notice and hearing, the validity or invalidity of mining locations. 48–6

34. A valid subsisting mining location antedating the act of October 2, 1917, which authorizes exploration for and disposition of potassium reserved under the act of July 17, 1914, vested the claimant with a substantial property right and the beneficial ownership and control of the land, such as to constitute a bar to the granting of a lease for the potash deposits. 48–6

35. A mining claim can not be located upon land embraced in an oil and gas prospecting permit, and a mining location which was without legal effect *ab initio* because at the time of the initiation of the claim the land was covered by an oil and gas prospecting permit does not attach upon cancellation of the permit. 51–649

36. The title of a mining claimant who had acquired only the minerals in lands which, at the time of the initiation of his claim were covered by a stock-raising homestead entry, does not become automatically enlarged, upon cancellation of the entry, to include the land and the minerals, but the surface continues to remain a separate estate. 51–650

37. A classification of land as coal, unless the land be valuable therefor, is not sufficient to bar its location under the mining laws on account of a metallic mineral, and before an application for mineral patent on the basis of such a location is rejected because of the classification, the applicant should be afforded an opportunity to show, if he can, that the classification was erroneous. 51–436

38. The act of February 11, 1897, which declared that lands containing petroleum and other mineral oils, and chiefly valuable therefor, may be entered under the placer mining laws, did not contemplate that the comparative value of a tract for petroleum and for coal should be considered in determining the patentability of the land on account of petroleum. 51–437

39. Proof that a tract of land, classified as coal and valuable therefor, possesses a greater value for petroleum than for coal, does not subject the land to location, entry, and patent under the placer mining laws on account of its oil and gas contents. 51–437

40. The principle with respect to a rule of property set forth in the Rough Rider case (42 L. D. 584) will not be applied where the claimant's title was acquired and application for patent was filed subsequently to the issuance of the departmental regulations of May 21, 1909, which require that the evidence must specifically show that the claim contains a valuable mineral deposit. 48–598

41. Proof in a proper proceeding of the inclusion within the limits of a lode mining claim, made in good faith and based upon a sufficient discovery, of an area comprising part of an odd-numbered section within the primary limits of a railroad grant, establishes *prima facie* or presumptively the mineral character of such area, and unless that presumption be overcome by sat-

isfactory evidence that the area in conflict is not mineral in character it must be held to be excepted from the operation of the grant. 49–588

42. The joint resolution of July 17, 1919, which, under certain specified conditions, exempted owners of mining claims who entered the military or naval service of the United States during the war with Germany, from the forfeiture penalty imposed for nonperformance of annual assessment work by section 2324, Revised Statutes, did not contemplate extension of its application substantially beyond the date of the establishment of a status of peace. 50–291

43. The use of water in a shaft for the grazing of cattle by the locator upon lands within his mining location is merely incidental to the primary purpose of the claim and does not affect the locator's right to a patent in the absence of abandonment or forfeiture of the claim where a discovery of mineral and the expenditures prescribed by the mining laws as prerequisite to patent had been made. 50–528

44. On and after the passage of the leasing acts of October 2, 1917, and February 25, 1920, lands which at the time of an attempted location on account of metalliferous deposits are known to be valuable for any of the minerals named in those acts are not subject to appropriation under the preexisting mining laws. 50–650

45. Ownership of the stock of a corporation organized under the laws of the United States or of any State or Territory thereof by persons, associations, or corporations not citizens of the United States, does not preclude such corporation from acquiring claims under the mining laws. 51–62

46. Where the invalidity of a mining location is alleged and the ownership of the apex is a controlling fact in determining its validity the Land Department has jurisdiction to inquire as to whether the apex of the discovered vein is within the claim attacked. 51–464

47. An applicant for a mineral patent can not be required to show affirmatively that the discovery he alleges is situated upon the apex of his vein in the absence of a positive allegation by an adverse claimant that the discovery alleged is on the dip of a vein that has been theretofore validly appropriated and has become the property of another. 51–464

48. The presumption of ownership in the locator of all within his location lines throughout the entire depth will prevail until it is shown that the veins or lodes within the planes of his lines extended downward vertically have their apices in the surface of another's valid location, thereby giving the latter a right to pursue them. 51–464

II. Location

49. Instructions of June 15, 1911, under act of March 2, 1911, concerning oil locations made prior to the date of said act. 41–91

50. A mining location is not perfected or completed until a discovery of mineral within the limits of the claim has been made; and where no discovery was made prior to the filing of an application for patent, such application and the proceedings thereunder, being without legal foundation, can not be recognized as a basis for mineral entry or patent. 43–397

51. Where an application for patent under the mining laws is based on a certain specified location, and proceedings by the Government are instituted against the same charging that some of the alleged locators are without interest, the applicant will not be heard, in the absence of publication and all other processes attendant upon an original application, to assert that in fact he bases his application on a different location of the same land. 44–420

52. Oil shale having been recognized by both the department and Congress as a mineral deposit and a source of petroleum, and having been demonstrated elsewhere to be a ma-

terial of economic importance, lands valuable on account thereof must be held to be subject to valid location and appropriation under the placer mining laws to the same extent and subject to the same provisions and conditions as if valuable on account of oil or gas. 47–548

53. Mining locations made by individuals who are stockholders in a corporation, embracing lands desired by the latter, with an understanding that the locators would quitclaim to the corporation, which they thereafter did, must be held to have been made not in the interest of the individual locators, but for the sole use and benefit of the corporation, and under such conditions the corporation can not include in a single location an area exceeding 20 acres. 49–508

54. Large expenditures upon mining claims made on behalf of a corporation asserting the right to receive patent therefor, although evidencing a lack of bad faith, can not serve to validate locations which are otherwise invalid. 49–508

55. A location certificate does not of itself constitute evidence of the mineral character of the land described therein, nor do the recitals in a location notice or certificate that a discovery has been made constitute evidence of discovery. 50–6

56. The provision in section 2324, Revised Statutes, declaring that a mining claim upon which the required annual assessment work has not been performed shall be subject to relocation in the same manner as if no location of the same had ever been made, impresses the land in a defaulted claim with the status of public land which, as long as it remains in that state, may be withdrawn by the Government. 50–262

57. Disputes between rival claimants relating to the fulfillment by mining locators, or their successors in interest, of the legal requirements as to performance of annual assessment work, or relating to the filing of notices in compliance with a relief statute with a view to holding claims without the performance of such work, are not, generally, matters for departmental determination, but come exclusively within the jurisdiction of the courts. 50–291

58. Failure to record the location notice of a mining claim does not render the location invalid or work a forfeiture of the claim in the absence of intervening adverse rights under the mining laws, where the local customs or statutes do not so provide. 50–577

59. Where a variance or discrepancy between a mineral location notice or certificate and the stakes and monuments on the ground exists, the latter are more certain evidence of the exact situs of the claim and will prevail. 50–577

60. The proviso to section 24 of the Federal water power act, considered in the light of the provisions of section 2 of the act of June 9, 1916, operates retroactively to validate mining claims, otherwise regular, located upon lands within the forfeited grant to the Oregon & California Railroad Co., after their Executive withdrawal as "power-site lands," but prior to their classification as such, the claims, however, being subject to the conditions and limitations of said section 24. 50–656

III. Boundaries

61. Reference in a patent for a mining claim to the mineral lot number of the claim is a sufficient reference to the plat and field notes of survey of such claim to render them admissible in evidence for the purpose of showing that the lines of such claim bordering on a water front are in fact meander lines. 45–330

62. The rule as to meander lines is applicable to mining claims, and where in the course of an official patent survey of a mining claim abutting upon a navigable body of water a meander line has been run, which follows as

nearly as practicable the shore line of the water, such shore line, and not the meander line, must be taken as a boundary of the claim when patented according to the plat and field notes of the survey. 45–331

63. Where one of the boundaries of a patented mining claim is a navigable body of water, all accretions formed after survey and prior to entry and patent of the tract passed under the patent, and all accretions that may thereafter form become the property of the riparian proprietor. 45–331

IV. Application

64. An area included in a pending application under the mining laws can not properly be included in a subsequent mineral application. 45–158

65. Where a mining claim and a railroad right of way overlap at one end of the claim, the mineral claimant may, in his application for patent, eliminate that part of his claim which is included in the right of way. 51–131

66. In passing upon a mineral application for patent, the good faith of the applicant and the use to which he has devoted or may intend to devote the land are proper elements for consideration by the Land Department as incidental to, and throwing light upon, the real value and character of the land. 41–655

67. The verification of an application for patent to a mining claim by an attorney in fact for the claimant, at a time when the claimant himself is both resident and physically within the land district, is unauthorized, and entry allowed upon such application is invalid and can not be submitted to the Board of Equitable Adjudication. 41–614

68. The verification of an application for patent to a mining claim by an attorney in fact for the claimant, at a time when the claimant himself is both resident and physically within the land district, is unauthorized, and entry allowed upon such application is invalid. 42–481

69. Section 2335, Revised Statutes, contemplates that applications for patent under the mining laws, and proofs to support the same, shall be verified within the land district wherein the claim applied for is situated; and an application verified outside the land district wherein the claim is situated, although before an officer authorized to administer oaths therein, is not properly verified within the meaning of that section. 42–526

70. Where an applicant for mineral patent withdraws his application after hearing upon a protest against the same, involving the character of the land, any subsequent mineral application filed by him for the same land must be considered and adjudicated in the light of the testimony submitted at such hearing. 44–125

71. A senior applicant for patent under the mining laws does not by the filing of an adverse claim against a conflicting junior application, and the institution of suit thereon, abandon or forfeit any rights under his senior application; and the pendency of such adverse suit does not operate as a stay of proceedings in the land department on the junior application pending determination of the suit. 45–158

V. Survey

72. Where a placer entry of part of a regular-shaped lot composed of legal subdivisions is described in terms of the public surveys as a legal subdivision, and may be readily identified by that description, a special mineral survey thereof will not be required. 42–413

73. Paragraph 135 of the mining regulations contemplates that each individual claim of a contiguous group embraced in the same survey shall be connected with a public survey corner or United States location monument not more than 2 miles distant; and where only one claim of such group

is connected to a public survey corner within the 2-mile limit, and the remainder are connected by tie lines more than 2 miles in length, an entry allowed for such group may be permitted to stand only as to the claim within 2 miles of the public survey corner and will be rejected as to the others. 42–485

74. Where between the dates of the original location of a mining claim and an amended location thereof the claim was included within an area withdrawn by competent authority from appropriation under the mining laws, no rights attach by virtue of the amended location to such portions of the vein or lode claimed thereunder as were not included in the original location, so long as the withdrawal stands; and as no lawful purpose would therefore be subserved by a survey of the amended location, the land department will not direct such survey to be made. 43–232

75. To determine the necessity of a segregation survey, it should be established with certainty by competent testimony that a mining claim includes or invades a subdivision and that the valuable mineral lands are within the boundaries of the claim. 50–577

76. Instructions of October 8, 1912, governing plats of survey of mining claims in Alaska. 41–294

VI. Notice

77. The regulations respecting the publication of notice of an application for patent for a mining claim require that the notice shall appear in each issue of the designated newspaper published during the 60-day period fixed by section 2325, Revised Statutes, excluding the first day of issue; and publication in only one issue each week of a triweekly newspaper, for the period of 60 days, does not meet the requirements of the statute and regulations. 41–369

78. Where the notice of an application for patent under the mining laws as published and posted embraces a tract not covered by the application, the notice and all proceedings had thereon are null and void as to that tract; and the defect can not be cured and the entry permitted to stand by subsequent amendment of the application to include the omitted tract. 42–550

79. Section 2325, Revised Statutes, contemplates that notice of an application for patent for a mining claim shall be posted within the exterior limits of the area applied for; and the posting of notice outside of a claim, and 800 feet distant therefrom, is not such a substantial compliance with the requirements of the law as will warrant submission of the entry to the Board of Equitable Adjudication. 43–396

VII. Discovery and Expenditures

80. An adjudication by the Land Department that land is mineral does not dispense with the necessity for making a discovery of mineral thereon as a basis for a mining location and patent. 41–520

81. The requirement of section 2320, Revised Statutes, that there must be a discovery of a vein or lode of quartz or other rock in place, bearing gold or other valuable deposits, to support a lode mining location, is mandatory and can not be waived by the department. 41–320

82. Mere possession and occupancy of a mining claim, unaccompanied by diligent prosecution of work leading to the discovery of mineral are, in the absence of discovery, insufficient grounds for a lawful exclusion from the land of others who seek to make mineral discovery and development thereon. 48–630

83. Right of possession to a claim under the mining laws prior to discovery is accorded only so long as the claimant remains in actual physical possession of the land and in diligent prosecution of prospecting operations, and where there has been no discov-

ery, the mere performance of so-called assessment work will not prevent relocation by another. 50–348

84. A mining location is not perfected or completed until a discovery of mineral within the limits of the claim has been made; and where no discovery was made prior to the filing of an application for patent, such application and the proceedings thereunder, being without legal foundation, can not be recognized as a basis for mineral entry or patent. 43–397

85. Actual possession of a lode mining claim by one who has made no discovery and is not in diligent prosecution of work leading to discovery is no bar to the allowance of a stock-raising homestead entry which includes the part of the subdivision upon which the mining claim is located, where forcible intrusion upon such possession is not necessary in order to initiate the right. 51–258

86. For administrative purposes in determining the validity of an application for a mineral patent, it may be assumed, in the absence of a positive allegation and proof to the contrary, that the discovery upon which the applicant relies is upon a vein that has its apex within the claim, and if this assumption be challenged, the burden of proof will be upon the party raising the issue. 51–464

87. To constitute a valid discovery upon a lode mining claim three elements are necessary: (1) There must be a vein or lode of quartz or other rock in place; (2) the quartz or other rock in place must carry gold or some other valuable mineral deposit; and (3) the two preceding elements, when taken together, must be such as to warrant a prudent man in the expenditure of his time and money in the effort to develop a valuable mine. 41–326

88. The exposure of substantially valueless deposits on the surface of a lode mining claim, in themselves insusceptible of practical development, but which taken in connection with other established geological and mineralogical conditions in the district leads to the hope or belief that a valuable mineral deposit exists within the claim, does not constitute the discovery of a vein or lode within the meaning of the law nor afford a valid basis for a lode location. 41–242

89. The location of a lode mining claim must be supported by the discovery of the vein or lode within the limits of the claim located; and the exposure of substantially worthless deposits on the surface of a claim, which from observation and geological inference are supposed to indicate that other and unconnected veins or lodes lie at a greater depth, does not constitute a discovery within contemplation of the law, and is not a sufficient basis for a valid location. 41–255

90. Country rock in which it is claimed "kidneys" of copper ore may be expected to be found, is not itself a lode within the meaning of the mining laws, and the exposure of such rock within the limits of a lode claim, which may or may not contain mineral, does not constitute the discovery of a vein or lode within the meaning of the law and is not a sufficient basis to support a lode location. 41–255

91. The land department having for many years permitted mining locations and entries upon lands in the same region and upon the same character of deposit as the claims here involved, and issued patents upon like showing as to discovery as made in this case, and such practice having become a rule of property in that vicinity, and many locations having been made and claims purchased for valuable considerations in reliance upon such practice, at the dates of the locations and entries of the claims here involved, the stricter rule laid down in the decisions in this case of January 31, 1911, and September 5, 1912 (41 L. D. 242, 255), holding the showing in this case insufficient to constitute a valid discovery, will not be given a retroactive effect, and said decisions are vacated

and the entries here in question reinstated with a view to patent. 42–584

92. A discovery of ore in commercial quantities is not necessary to a valid lode location; but it is sufficient if a vein be found bearing mineral in such quantity and of such quality as would justify a person of ordinary prudence in making further expenditures of money and labor with a reasonable prospect of success in developing a valuable mine. 43–79

93. A discovery of a vein or lode of rock in place bearing valuable mineral is necessary to sustain a lode location, but an actual disclosure of commercial ore is not essential to effect an adequate discovery. 48–598

94. A recital of discovery in a recorded notice of location of a lode claim does not constitute evidence of discovery. 48–598

95. The fact that the elimination from a mineral entry of claims upon which satisfactory discovery had not been shown will render the uncanceled claims incontiguous, is not alone sufficient to cause the cancellation of such incontiguous claims, where the claims as originally located and held formed a contiguous body of land, and will occupy that status after the elimination of the claims upon which discovery had not been made. 48–598

96. To support a mining location, the discovery upon which the validity of the location is based must be of the particular deposit actually discovered within the limits of the claim for the reasonable prospect of the development of which into a valuable mine the evidence warrants further expenditure of time and money. 50–253

97. The fact that developments outside of a mining location, or that geological deductions indicate the existence within the limits of the claim, but unexposed therein, of deposits wholly unconnected with the deposit actually exposed or discovered, sufficient to warrant expenditures in the development of the claim, does not constitute a valid discovery of mineral upon which to predicate a right to a patent. 50–253

98. The loss of the discovery upon which a mining location is based invalidates the location, unless, prior to application for patent or the assertion of adverse claim to the ground under the mining laws, a sufficient discovery is made within the remaining portion thereof. 42–481

99. Where as the result of a judgment in an adverse suit that part of the applicant's location containing the original discovery is lost, it is essential that there be shown a discovery made upon that portion of the claim remaining intact prior to date of filing application for mineral patent. 47–38

100. In connection with a *bona fide* lode location there arises a presumption of fact that the located vein extends throughout the length of the claim, and if the original discovery be lost, a further timely discovery upon retained ground, although more than 300 feet distant from a side line, evidences the mineral character of the land and is sufficient to support the claim. 47–38

101. The Land Department will not enforce the cancellation of claims embraced within a mineral entry upon which discovery was not made until after the filing of the application to make entry, where discovery had been made upon certain other claims and the group, including those upon which discovery was afterwards made, is held in common ownership and forms a contiguous body upon the ground. 48–599

102. The sufficiency and availability of patent expenditures are satisfactorily established when the evidence shows that the claimant has been working adjoining mining ground owned by him by means of an extensive system connected with a main tunnel; that a number of the workings directed toward the claim are within a reasonable distance; and that the logical and practical way to develop the claim at depth is by the extension of those workings. 48–598

103. Expenditures for repairs to a tunnel constructed as a common improvement for the development of a number of contiguous mining claims held in common, without further extension of the tunnel, can not be accredited as a basis for patent to other contiguous claims held by the same owners located subsequently to completion of the tunnel. 42–75

104. Where a deep quarry has been excavated upon one of a group of placer mining claims held in common, for the purpose of developing a deposit or formation of marble existing within the group, and has been projected to within a few feet of another claim of the group, and the topographic conditions are such that the marble within such claim can be more economically removed through the existing excavation than through an independent plan of development, a proportionate share of the cost of such improvement is applicable to such claim in satisfaction of the statutory requirement concerning expenditure as a basis for patent. 42–417

105. A wagon road or trail constructed in good faith and for the manifest purpose of aiding in the conduct of mining operations on the particular claim to which it is sought to be accredited, is available toward meeting the statutory requirement concerning expenditure as a basis for patent. 43–128

106. Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode mining claims held in common may be based are available toward meeting the statutory provision requiring an expenditure of $500 as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement. 43–79

107. No part of the value of permanent and immovable improvements on a mining claim, made long prior to the location thereof, by claimant under a previous location embracing the same ground, solely to improve and develop the prior claim, no privity being shown between former and present claimant, can be accredited to the later claim toward meeting the requirement of the statute as to patent expenditures. 43–152

108. The certificate of the surveyor general as to improvements upon a mining claim, required by section 2325, Revised Statutes, is not conclusive upon the Land Department, which may, in the presence of anything tending to impeach the correctness thereof, wholly disregard the certificate and require further showing as to improvements. 43–152

109. The certificate of a surveyor general as to the requisite improvements upon or for the benefit of a lode mining claim, made by the applicant or his grantors, is required whether the applicant be one who is relying upon an application under section 2325, Revised Statutes, or one who seeks patent as the successful litigant in an adverse suit under section 2326. 43–499

110. Paragraph 49 of the mining regulations of March 29, 1909, amended to authorize surveyors general to accept corroborated affidavits as the basis for certificates that the improvements returned by mineral surveyors were made by the mining claimants, or their grantors, for the benefit of the claims surveyed. 43–499

111. A mining claimant who has satisfied the requirements of section 2325, Revised Statutes, except to make payment, is not required to make the annual expenditures during the pendency of adverse proceedings against his claim if he takes the necessary steps to complete his title at the first opportunity afforded him under the law and departmental practice after dismissal of the contest. 51–458

112. Credit toward compliance with the annual assessment work required by section 2324, Revised Statutes, can not be allowed for expenditures upon other claims of a group of which the

one under consideration once formed a part, if the claimant had no interest in those other claims at the time that the expenditures thereupon were made. 51–101

113. The cost of excavations of so-called drilling cellars can not be applied as acceptable annual assessment work upon any other claim than that upon which the excavations were made. 51–101

VIII. Adverse Claim

114. An adverse claim by a corporation, under section 2326, Revised Statutes, verified by its executive officer outside of the land district where the claim involved is situated but at its principal place of business, is within the meaning and intent of the law the act of the corporation itself. 42–99

115. Section 2326, Revised Statutes, and the concluding portion of the preceding section, relating to proceedings between adverse claimants under the mining laws, have reference to unperfected mining claims to areas subject to patent under the mining laws, and not to tracts the legal title to which has at the date of the patent application passed out of the Government, and have no application to a case where the question is whether the area involved is public land of the United States and as such is susceptible of conveyance by a United States patent. 45–330

116. In order to protect his right, one claiming a mill site under section 2337, Revised Statutes, is authorized and required under sections 2325 and 2326 to institute adverse proceedings against a conflicting application for mill site patent under said section 2337, and such proceedings properly instituted constitute a bar to further action by the department until the adverse suit shall have been decided. 47–32

117. The failure of an applicant for patent to a mining claim to comply with local laws or regulations as to the posting of a notice relating to improvements, while possibly subjecting a claim to relocation before entry, presents no valid basis for the cancellation of an entry in the absence of an adverse claim legally asserted. 47–74

118. While a suit is pending between an applicant for a mineral patent and an adverse claimant, the Land Department is precluded by section 2326, Revised Statutes, as amended by the act of March 3, 1881, from entertaining a contest by a third party, alleging discovery, against either of the parties litigant on the ground that both had failed to comply with some essential requirement of the mining laws. 49–525

119. Where a senior locator of a lode mining claim, through lack of diligence or vigilance, or from any other cause, fails timely to file an adverse claim against an application for patent made by a conflicting junior locator, the former will not be permitted to urge as a valid objection to the issuance of a patent to the latter that the only discovery on the claim is that made by the senior locator. 49–629

IX. Lode

120. A mineral deposit in vein or lode formation—in place in the general mass of the mountain—whether the mineral it bears be metallic or nonmetallic, is subject to disposition only under the provisions of the lode mining laws. 41–403

121. A deposit of phosphate rock confined between well-defined boundaries constitutes a vein or lode of mineral-bearing rock in place and is subject to disposition only under the provisions of the lode mining laws. 41–403

122. Where a homestead entry conflicts with a lode mining claim, the homestead entryman having settled upon the tract prior to survey and to the lode location, the point of dis-

covery of which is outside the limits of the homestead tract, the right of the entryman is superior to that of the locator if the evidence does not show that the vein extends into the homestead tract or that the area in conflict is mineral. 46–268

X. Placer

123. The placer mining laws do not authorize the patenting of land with a reservation to the United States of the coal deposits therein. 51–437

124. Regulations of March 31, 1915, under act of January 11, 1915, validating placer locations on phosphate lands. 44–46

125. A corporation, regardless of the number of its stockholders, may lawfully locate no greater placer area under the mining laws than is allowable in the case of an individual, namely, 20 acres. 41–655

126. A placer location made in good faith by an association of persons who subsequently form themselves into a corporation for the purpose of developing the property, each owning stock in the corporation to which the location is conveyed in proportion to his interest in the claim, is not invalid, there being no evidence that such location was made in the interest of and with a view to enabling the corporation to acquire a greater area of mineral ground than may lawfully be embraced in a single location by a corporation. 44–340

127. The act of August 4, 1892, authorizing the location of land chiefly valuable for building stone under the placer mining laws, applies only to deposits of stone of special or peculiar value for structural work, such as the erection of buildings, and such other recognized commercial uses as demand and will secure the profitable extraction and marketing of the product; and has no application to the vast deposits of low-grade rock in the public domain which possess no special or peculiar value for structural purposes, and are useful only for rough work in the immediate vicinity. 41–655

128. Where an affidavit of contest by a placer mining claimant against a homestead entry charges that the land in controversy is mineral in character, and contains averments sufficient to apprise the homestead claimant of the nature of the case and to enable him to prepare his defense without danger of surprise, it is not necessary that the affidavit further contain positive averments as to the character of each 10-acre legal subdivision, based upon personal knowledge; but upon trial of the case it will be incumbent upon the mineral claimant to establish the actual discovery or disclosure of mineral upon each location involved and that the area in conflict is prima facie mineral in character, containing placer deposits; and for the purpose of so showing the land to be mineral in character it may be divided into 10-acre subdivisions, and the contest may be sustained as to such 10-acre tracts as are shown to be of such character. 41–642

129. Land embraced in a school indemnity selection is not subject to location as a building stone placer under the act of August 4, 1892. 42–401

130. The act of January 11, 1915, authorizing the completion under the placer mining laws of placer locations of lands containing deposits of phosphate rock, applies only to placer locations upon which the assessment work has been annually performed; and the Land Department is without authority to extend the remedial provisions of that act to locations upon which annual assessment work has not been performed. 44–356

131. The smallest legal subdivisions authorized by statute according to which placer claims on surveyed lands may be located and described are 10-acre tracts, normally in square form; but where location of a claim by 10-acre tracts in square form would necessitate the inclusion of lands which

have passed out of the public domain or which are embraced in adjoining mining claims, the claim may be located and described by rectangular 10-acre tracts, as provided by paragraphs 22 to 24 of the regulations of July 1, 1901, even though not in square form. 45–174

132. Where the locator of a mining claim conveys all his right, title, and interest in a strip thereof to a railroad company, over which the line of road is constructed, the area so conveyed should be excluded from application for patent for the claim. 45–212

133. Where it has been determined by a court of competent jurisdiction in a controverted case that a lode was not a vein or lode known to exist at the date of a placer application upon which a patent had issued, the Land Department will not undertake a reinvestigation of the issue, but will adopt that conclusion and refuse to entertain an application to make mineral entry under an alleged lode location. 48–521

134. The special act of August 1, 1912, which made the requirements with respect to annual assessment work upon placer mining claims in Alaska more stringent than theretofore, did not abridge the self-executing forfeiture penalty imposed by the act of March 2, 1907, for failure to perform the required assessment work, and the rule which prevailed under the latter act that an owner in default can not save his claim by the resumption of work prior to a relocation is applicable, regardless of whether the original location was made after or before August 1, 1912. 49–432

135. The general act of August 24, 1921, which amended section 2 of the act of January 22, 1880, by changing the period for the performance of annual assessment work from the calendar to the fiscal year, is applicable to placer mining claims in Alaska, but it did not abrogate the requirements of the act of August 1, 1912, as to the annual work that must be performed during the year of location. 49–432

136. Section 9 of the act of December 29, 1916, contemplated the perfection of claims by locators under the placer mining laws to the reserved mineral deposits, and possession of the land by a stock-raising homestead entryman with the acquiescence of a placer mining claimant does not constitute an adverse possession that will estop the latter from denying abandonment of the mining claim. 50–192

137. The provision in section 2320, Revised Statutes, that with respect to lode mining claims no location shall be made until there shall have been a discovery of the vein or lode within the limits of the claim located, was made applicable to placer mining claims by section 2329, Revised Statutes. 50–244

138. A meager showing of oil in a well drilled on a location to a stratum of sand wholly separate and distinct from the underlying formations in which workable oil deposits are expected to be developed within the limits of the claim and in the vicinity thereof does not constitute a valid discovery, and affords no legal basis for entry and patent under the placer mining laws. 50–244

139. Trap, or trap rock, a general name for dark fine-grained rock, found in broken-up fragments in a limited area, which is particularly suitable and can be profitably marketed for ballast, is, when the land in which it is contained is chiefly valuable for such, a valuable mineral deposit subject to appropriation and patent under the placer-mining laws. 50–489

XI. Protest

140. The alleged absence, during the period of publication of notice of application for mineral patent of an official survey monument marking a single corner of a mining claim or claims included in an application, affords no valid basis of protest against the application if there was enough upon the ground covered by the application, when considered in the light of

the published notice, to have put the protestant upon inquiry as to the area included in the application. 47–74

141. In cases where the notice of application is regular and sufficient the Land Department will not inquire into a charge made by one who fails to adverse, that fraudulent representations have been made to him by an applicant for mineral patent, as to the area claimed by such applicant. 47–74

XII. Mill Site, Tunnel Site, etc.

142. The use of a mill site as a location for a blacksmith shop and tool house, in which are stored tools, machinery, etc., necessary to run a tunnel upon the mining claim in connection with which the mill site was taken, and as a storage place for supplies needed in development work upon such mining claim, constitutes a use and occupation of the land for "mining and milling purposes," within the meaning of section 2337, Revised Statutes. 42–255

143. Section 10 of the act of May 14, 1898, reserving a 60-foot roadway along the shore line of navigable waters in Alaska, contemplates the reservation of only an easement for highway purposes, and is no bar to the location of claims to the water's edge, subject to the roadway easement. 42–255

144. A mill-site claim may be located adjoining the end of a lode mining claim, provided it be clearly shown that the lode or vein along which the mining location is laid either terminates before the end abutting upon the mill-site claim would otherwise be reached, or that it departs from the side line of the mining claim, and that the ground embraced in such adjoining mill-site claim is nonmineral in character. 42–434

145. A decision by the Department of the Interior canceling a mill-site entry, without passing upon the validity of the mill-site claim or location or the claimant's possessory rights or ownership in the premises, in no wise affects the legal rights, if any, the claimant may have in the mill-site claim; and where the land is included within the limits of a national forest, but excepted from the operation of the proclamation creating the same, by reason of the mill-site claim, the subsequent cancellation of the mill-site entry does not have the effect to make the land a part of the national forest or deprive the Secretary of the Interior of jurisdiction to reinstate the canceled entry with a view to the issuance of patent thereon. 43–257

146. Section 2337, Revised Statutes, contemplates that a mill site used and occupied only for mining purposes in connection with a lode mining claim or group of claims shall be patented simultaneously with the lode claim or claims to which it is appurtenant, unless the lode claim or claims shall have been previously patented; and the rejection in its entirety of an application for patent to a lode claim or group of claims carries with it an included application for patent to a mill site used only in connection with such claim or claims. 43–548

147. The act of June 4, 1897, making lands within forest reserves subject to entry under the existing mining laws of the United States, confers the right to locate or purchase a mill site in connection with a lode claim within a national forest. 44–197

148. A mill-site location made by the owner of a lode claim is invalid unless the ground claimed is used or occupied for mining or milling purposes. 46–178

149. The Land Department has ample authority to entertain adverse proceedings to determine the validity of an asserted mill-site claim within a national forest before application for patent is filed. 46–178

150. In order to protect his rights, one claiming a mill site under section 2337, Revised Statutes, is authorized and required under sections 2325 and 2326 to institute adverse proceedings

against a conflicting application for mill-site patent under said section 2337, and such proceedings properly instituted constitute a bar to further action by the department until the adverse suit shall have been decided. 47–32

151. Notice of an application for mill site under section 2337, Revised Statutes, located for mining and milling purposes in connection with a lode mining claim is accorded the same force and effect as that given to a notice of the application for the vein or lode claim. 47–32

152. The sinking of wells and the construction of substantial improvements for the conveyance and utilization of water therefrom in the operation of a lode claim are such use as will justify the allowance of entry of the land as a mill site. 47–580

153. The operation of the mill site law, section 2337, Revised Statutes, is in terms limited to nonmineral land, and the Land Department has no authority to issue a limited patent thereunder for surface lands within a petroleum reserve. 48–243

154. A single application for patent or entry under the United States mining laws may not include incontiguous mining claims or locations, and the location of a mill site on ground between mining claims will not establish the necessary contiguity. 51–123

155. The appropriation of land for the purpose of conveying water to and for a road used in transporting ore from actively operated mining claims can not be considered such a use for mining and milling purposes as is contemplated in section 2337, Revised Statutes. 51–123

156. A mill site is not a mining claim or location within the meaning of the United States mining laws. 51–123

157. A rock crusher or pulverizer not shown to be connected with or forming an essential part of the instrumentalities used in any process of reduction is not a "reduction works" within the meaning of the last clause of section 2337, Revised Statutes. 51–459

158. Section 2323, Revised Statutes, confers upon tunnel-site claimants merely the preference right, as against a subsequent lode claimant, to appropriate, in the manner provided by other provisions of the mining laws, any vein or lode, not appearing on the surface, which may be discovered in a tunnel projected under the provisions of said section within 3,000 feet from the portal thereof, provided the work thereon be prosecuted with reasonable diligence; but said section does not authorize the sale or patenting of any ground on the exclusive basis of a tunnel location, whether the tunnel be run for the development of veins or lodes already located or is projected for the discovery of "blind" veins or lodes. 42–456

MINNESOTA

See CHIPPEWA LANDS, 49–640; MINNESOTA DRAINAGE LANDS; RAILROAD LANDS, 49–391; RECLAMATION, 50–685.

MINNESOTA DRAINAGE LANDS

1. Regulations of May 16, 1912, amending paragraph 4 of regulations of February 29, 1912, relating to drainage of swamp and overflowed lands in Minnesota. 41–18

2. Amended instructions of April 24, 1913, under act of May 20, 1908, governing drainage of swamp and overflowed lands in Minnesota. 42–104

3. Circular of April 15, 1916, revising instructions of April 24, 1913, under the Minnesota drainage act of May 20, 1908. 45–40

4. Circular of January 26, 1917, under act of September 5, 1916. 45–623

5. Minnesota drainage regulations, amended. 46–419

6. Minnesota drainage. Instructions relative to proceedings after expiration of period of redemption. 46–438

7. Where lands made subject to the drainage laws of the State of Minnesota by the act of May 20, 1908, were sold for taxes under said act, and the purchaser at the tax sale subsequently waives and assigns all rights under such purchase to one duly qualified to make entry under the homestead laws, such transferee is entitled, in the absence of any intervening adverse entry under the act, to make homestead entry of the land, subject to the provisions of said act. 43–425

8. One who made homestead entry for less than 160 acres and who would after submission of final proof upon such entry be entitled to make an additional entry under section 6 of the act of March 2, 1889, is qualified to purchase from the State and make entry under the act of May 20, 1908, of lands sold under said act and bid in by the State for drainage charges, whether said lands are contiguous or noncontiguous to his unperfected entry. 44–380

9. Where the highest bidder for unentered lands sold for drainage charges under section 2 of the act of May 20, 1908, fails to consummate his purchase by entry within the time prescribed by the act, a subsequent purchaser of the land under section 6 will be required to pay the unpaid fees, commissions, and purchase price to which the United States may then be entitled, the entire sum at which the land was sold at the sale, including any excess over and above the drainage charges, and, where bid in by the State, interest on the amount bid by the State at the rate of 7 per cent per annum. 45–12

10. Where there has been more than one sale of land by the State of Minnesota for delinquent drainage taxes under the act of May 20, 1908, and the respective purchasers failed to consummate their purchases by entry, a subsequent purchaser from the State under that act will be required to pay the excess bid made by the last preceding purchaser, together with the other payments required to be made under the act, but will not be required to pay the excess bids of any earlier preceding purchasers. 45–516

11. A homesteader who fails to pay the drainage tax under the act of May 20, 1908, and whose land is bought in by the State for the delinquent tax, does not by purchase of the tax certificate from the State become entitled to purchase the land for cash, and thus evade his obligation to reside upon the land under his homestead entry; but his purchase of the tax certificate constitutes merely a redemption of the tax sale, and he will be required to continue compliance with the requirements of the homestead law. 45–199

12. A homestead entryman in the State of Minnesota who has continued to comply with the law as to residence, improvements, and cultivation may discharge his obligations to the State under the act of May 20, 1908, and accomplish redemption after the lapse of the statutory period, by becoming subrogated to the rights of the purchaser or holder of the tax sales certificates. 47–598

13. Instructions of April 1, 1925, Minnesota drainage laws; procedure after expiration of period of redemption; Circulars Nos. 470 and 969, amended. (Circular No. 989.) 51–83

MINORS

See CITIZENSHIP, 48–66; CONTEST, 46–51; HOMESTEAD, 43–25, 27–29, 116; 44–65; INDIAN LANDS, 43–149; 44–520; RECLAMATION, 45–22.

MISSION CLAIM

See PATENT, 50–676; 51–170.

1. The provision in the Indian appropriation act of September 21, 1922, which relates to the issuance of patents to religious organizations for lands within Indian reservations generally, did not repeal the proviso to section 3 of the special act of March

3, 1921, as to the form of patent to be issued or the quantity of land granted to such organizations within the Fort Belknap Reservation, Mont. 51–419

MISSOURI, STATE OF

See SCRIP, 49–146.

MONTANA

See CROW INDIAN LANDS; FORT ASSINNIBOINE LANDS; HOMESTEAD, 49–194, 610; INDIAN LANDS; MORTGAGE, 49–610; RIPARIAN RIGHTS, 50–284, 285; SCHOOL LANDS, 44–414; 48–103, 512.

1. Instructions of April 23, 1923, exchange of public lands in Montana for privately owned lands in the Glacier National Park. (Circular No. 890.) 49–536

MORTGAGE

See HOMESTEAD, 50–645; PRACTICE, 46–474; RECLAMATION, 43–373; 48–325; 50–4; RELINQUISHMENT, 48–613; REPAYMENT, 43–335.

1. A mortgage given upon a homestead entry prior to the submission of final proof, for the purpose of securing money for improvements or for any other purpose not inconsistent with good faith, does not constitute an alienation of the land, or violate the purpose and intent of section 2296, Revised Statutes, which specifically declares that lands embraced within a homestead entry shall not be taken in satisfaction of any debt incurred prior to patent. 48–637

2. A homestead entryman is not precluded from mortgaging his entry prior to the perfection of his equitable title, and the provision contained in section 2296, Revised Statutes, to the effect that no homestead shall in any event become liable to the satisfaction of any debt contracted prior to the issuance of patent, does not invalidate a mortgage voluntarily given on an unperfected entry. 48–582

3. A mortgagee who has filed notice of his mortgage interest in an unperfected homestead entry as provided by rule 98, Rules of Practice, must be given notice of any relinquishment filed, and no relinquishment will be accepted by the Land Department unless he joins therein or until he has had reasonable opportunity to make a showing. 48–582

4. While section 2291, Revised Statutes, contemplates that a homestead entryman shall, upon the submission of final proof, appear personally before the proof-taking officer, yet an exception to that requirement will be made where the testimony of the entryman can not be obtained, and in such cases equitable consideration will be given to evidence submitted by a mortgagee showing that all of the conditions precedent to patent have been performed by the entryman. 48–582

5. Under the laws of the State of Montana a mortgage is merely a lien upon the property mortgaged, and a mortgagee who purchases at foreclosure sale a homestead covered by his mortgage is not, prior to such purchase, entitled to claim as an assignee within the purview of section 20 of the act of February 25, 1920. 49–610

6. Where an entry is relinquished after the equitable title thereto has been earned and the county records show at date of relinquishment the existence of a mortgage, a trust will be declared against a subsequent entry for the benefit of the mortgagee to the extent of the mortgage. 50–431

7. The purchase of a relinquishment of an entry, the equitable title to which had been earned, for a mere fraction of its value, without consulting the records of the local office and the county records, gives rise to the suggestion of bad faith on the part of the purchaser and precludes the plea by him of ignorance of the existence of a mortgage, where those records contain sufficient data to put him on notice thereof. 50–431

8. Consent to accept a restricted patent in accordance with the provisions of the act of July 17, 1914, for

oil and gas lands, may be filed by a mortgagee, if the homestead entryman, after proper notification, fails to do so. 50–240

9. A homestead entryman, after submission of acceptable final proof, can not by wrongful abandonment and forfeiture of his rights acquired thereunder, defeat the rights of an encumbrancer who has in good faith furnished the means with which to improve the entry, but the latter will be allowed to show that equitable title has been earned by compliance with the essential requirements of the law. 51–519

10. Where a mortgaged homestead entry has been canceled upon default of the entryman after submission of acceptable final proof, a subsequent entryman will be chargeable with notice of what an examination of the county records would have disclosed with respect to the mortgage. 51–519

MOSES INDIAN LANDS

See INDIAN LANDS, 50–571.

NATIONAL FORESTS

See FOREST LIEU SELECTION, 48–132; 49–383; HOMESTEAD, XVII; also, 44–413; 49–278; INDIAN LANDS, 46–283; 48–362; MINING CLAIM, 43–257; 44–197; 46–20; POWER SITES, 50–660; RIGHT OF WAY, 43–448; 44–359; 46–89, 240; 47–224; SALINE LANDS AND SALT SPRINGS, 45–620; SCHOOL LANDS, 44–468; 45–593, 644; 46–217; 48–97; STATES AND TERRITORIES, 45–620; WITHDRAWAL, 47–329.

1. Proclamation and regulations of October 4, 1913, governing opening of Nebraska forest and Fort Niobrara lands. 42–277, 282, 288

2. Regulations of November 14, 1914, concerning rights of way upon unsurveyed national forest lands. 43–448

3. Order of March 4, 1914, concerning closing of cases involving entries within forest reserves. 43–165

4. Regulations of November 14, 1914, concerning rights of way upon unsurveyed national forest lands. 43–448

5. Joint regulations of September 4, 1915, relating to lands within national forests. 44–360

6. Instructions of March 20, 1925, consolidation of national forests; reprint of prior regulations. (Circular No. 863.) 51–69

7. Instructions of April 7, 1925, addition to the Mount Hood National Forest. (Circular No. 1015.) 51–133

8. Jurisdiction over lands eliminated from national forests; petitions for designation under the enlarged homestead acts. (Instructions.) 46–43

9. Instructions of May 17, 1917, regarding opening of lands released from withdrawal or excluded from national forests. 46–121

10. Instructions of October 28, 1922, consolidation of national forests; exchange of lands and timber; act of March 20, 1922. (Circular No. 863.) 49–365

11. Instructions of February 17, 1923, Malheur National Forest, Oregon; exchange of lands and timber; act of March 8, 1922. (Circular No. 873.) 49–448

12. Instructions of March 30, 1923, designation under the enlarged and stock-raising homestead acts of national forest lands, act of March 4, 1923. (Circular No. 886.) 49–506

13. Instructions of April 9, 1923, exchange of privately owned lands in Lincoln National Forest for public lands elsewhere in Otero County, New Mexico. (Circular No. 888.) 49–529

14. Instructions of July 11, 1923, exchange of privately owned lands in Rainier National Forest for public lands elsewhere in State of Washington. (Circular No. 900.) 49–645

15. Instructions of February 1, 1924, consolidation of national forests; description of lands to be exchanged; Circular No. 863, amended. (Circular No. 918.) 50–261

16. Instructions of February 4, 1924, consolidation of national forests; fees for exchange of lands and timber; Circulars Nos. 863 and 869, amended. (Circular No. 919.) 50–268

17. The mere fact that lands reserved as reservoir sites under the acts of October 2, 1888, and August 30, 1890, fall within the exterior limits of a national forest subsequently created, does not in anywise change their status of reserved reservoir lands, or render them subject to appropriation under section 4 of the act of February 1, 1905, granting rights of way for the construction and maintenance of dams, reservoirs, etc., for municipal and mining purposes, within and across forest reserves of the United States. 41–31

18. Section 1 of the act of March 3, 1911, authorizing the reinstatement of homestead entries canceled or relinquished because of the erroneous allowance of such entries after the withdrawal of lands for national forest purposes, makes no provision for the reinstatement of canceled timber and stone entries. 41–261

19. Section 2 of the act of March 3, 1911, providing that where contests were initiated prior to the withdrawal of lands for national forest purposes the qualified successful contestant may exercise his preference right to enter within six months after the passage of said act, contemplates that a contestant seeking to exercise his preference right under that act shall be qualified as an entryman at the date he makes application to enter, and if then not qualified his application must be rejected, notwithstanding he may have been qualified at the time the preference right of entry was earned. 41–261

20. Where change of jurisdiction occurs from the Department of Agriculture to the Department of the Interior, over lands in national forests for which permits under the act of February 15, 1901, have been issued by the Secretary of Agriculture, by reason of the lands being eliminated from the national forest, no action by the permittee will be required nor will his status be in anywise affected thereby; but the permit papers transmitted to the Department of the Interior by the Department of Agriculture will be considered as constituting the complete application, notation thereof will be made on the records of the General Land Office, a blue print of the map and copy of the field notes forwarded to the local land office for notation and filing, and the permittee advised that the Department of the Interior has assumed jurisdiction. 42–248

21. Where a homestead entryman was in default at the time of reservation of the lands for forest purposes, he can not thereafter cure the default in the face of the reservation. 43–538

22. By the excepting clause in the proclamation of May 6, 1905, creating the Klamath Forest Reserve, it was intended to except from the reservation those legal entries upon which the entrymen were at that time complying with the law and continued to comply with the law after the reservation was made. 43–538

23. A preference right of entry is acquired by a successful contest against an entry within a forest reservation, but such right remains suspended until the land shall be restored and become subject to entry. 43–458

24. Under the act of September 30, 1913, lands excluded from national forests or released from other withdrawals and restored to the public domain may be opened to settlement only for a definite period, not exceeding 90 days, and at the end of that time may be made subject generally to disposition under all the public land laws applicable; and where so opened, the preference right of selection conferred upon certain States by the act of March 3, 1893, operates for 60 days from and after the time the lands have been so declared to be subject

to disposition generally under the public land laws. 43–31

25. The act of September 30, 1913, authorizes certain limitations and conditions to be imposed upon lands thereafter excluded from national forests, but confers no authority upon the Land Department to impose such limitations and conditions upon lands theretofore authorized by proclamation to be excluded and restored to the public domain, which lands should be opened to disposition in accordance with the terms of the proclamation and the practice prevailing at the date the proclamation issued. 43–32

26. Under the act of September 30, 1913, lands excluded from national forests or released from other withdrawals and restored to the public domain may be opened to settlement only for a definite period, not exceeding 90 days, and at the end of that time may be made subject generally to disposition under all the public land laws applicable; and where so opened, the preference right of selection conferred upon certain States by the act of March 3, 1893, operates for 60 days from and after the time the lands have been so declared to be subject to disposition generally under the public land laws. 43–31

27. The act of September 30, 1913, authorizes certain limitations and conditions to be imposed upon lands thereafter excluded from national forests, but confers no authority upon the Land Department to impose such limitations and conditions upon lands theretofore authorized by proclamation to be excluded and restored to the public domain, which lands should be opened to disposition in accordance with the terms of the proclamation and the practice prevailing at the date the proclamation issued. 43–31

28. Where lands were claimed and substantially improved as a terminal for a constructed tramway prior to their withdrawal for inclusion in the Tongass National Forest, such valid rights were thereby acquired under the act of May 14, 1898, as excepted the lands claimed as terminal grounds from the operation and effect of said withdrawal, provided there is no undue delay in assertion of the claim before the Land Department. 43–523

29. A decision by the Department of the Interior canceling a mill site entry, without passing upon the validity of the mill site claim or location or the claimant's possessory rights or ownership in the premises, in no wise affects the legal rights, if any, the claimant may have in the mill site claim; and where the land is included within the limits of a national forest, but excepted from the operation of the proclamation creating the same, by reason of the mill site claim, the subsequent cancellation of the mill site entry does not have the effect to make the land a part of the national forest or deprive the Secretary of the Interior of jurisdiction to reinstate the canceled entry with a view to the issuance of patent thereon. 43–257

30. Lands in an abandoned military reservation included within a national forest are subject to listing and entry under the act of June 11, 1906, without regard to the act of July 5, 1884, providing for the appraisal and sale of lands in abandoned military reservations. 43–33

31. Land within a national forest restored to entry, upon application, under the act of June 11, 1906, is not subject to entry under that act where subsequently eliminated from the national forest by Executive proclamation; but entry thereof can only be made under the general public land laws. 44–550

32. Lands within a national forest restored to entry under the act of June 11, 1906, are subject to appropriation only under that act and can not be included in an entry under the enlarged homestead act; nor can an entry under said act of June 11, 1906, be made the basis for an additional entry under section 3 of the enlarged homestead act. 44–413

33. Where one claiming to have been a settler upon lands included within a forest withdrawal was at the date of such withdrawal the proprietor of more than 160 acres of land, and therefore not qualified to make a homestead settlement, he had no such settlement right at that date as would except the land from the force and effect of the withdrawal; and by subsequently reducing his holdings to less than 160 acres, and attempting to comply with the law as to residence upon the land claimed by him, he can not acquire any rights as against the withdrawal. 44–439

34. Where lands eliminated from a national forest and withdrawn under the act of June 25, 1910, for classification, were actually opened to settlement and entry under the act of June 11, 1906, before the issuance of the eliminating proclamation, they are subject to entry under that act by either the person on whose application they were listed or by any other qualified applicant. 44–29

35. The recital in a proclamation eliminating lands from a national forest that the proclamation "shall not prevent the settlement and entry of any lands heretofore opened to settlement and entry" under the act of June 11, 1906, does not except or exclude the land from the elimination made by the proclamation, its only effect being to leave the lands subject to entry under said act by persons entitled to make such entry, notwithstanding they have been restored to the public domain and made subject to other forms of disposal. 44–30

36. Where "roads, trails, bridges, fire lanes, telephone lines, cabins, fences, and other improvements necessary for the proper and economical administration, protection, and development of the national forests," have been actually constructed and are being maintained upon public lands of the United States under the provisions of the act of March 4, 1915, or survey has been made and the area needed for such improvements definitely fixed and the construction thereof has been provided for and will be immediately undertaken, and the lands are thereafter disposed of under any of the public land laws, the final certificate and patent should except such portion thereof as is so devoted to public purposes. 44–513

37. Lands which at the date of the proclamation creating a national forest are covered by a patent are excepted from the force and effect of the proclamation; but in event of reconveyance by the patentee, after recommendation for the institution of suit to cancel the patent on the ground of noncompliance with law prior to its issue, the lands at once become part of the national forest. 45–448

38. Upon cancellation, on the ground of fraud, of patent to lands within the exterior limits of a national forest, entry thereof having been made prior to the creation of the forest, such lands become part of the forest and are not subject to entry as unreserved public land. 45–542

39. Prior lawful occupancy of land within a national forest under a special use permit, by one who, subsequent to enactment of the statute of June 6, 1912, procures the listing and homestead entry thereof under the act of June 11, 1906, is not settlement or residence within the purview of the act of March 4, 1913; and such entry can only be perfected under the provisions of said act of June 6, 1912. 47–173

40. The act of September 22, 1922, which provides for an exchange of national forest lands, does not contemplate a forced exchange, but authorizes the execution of a quitclaim deed where the former owner of the base land, after relinquishing it, declines to make the exchange. 50–435

NATIONAL MONUMENTS

See RIGHT OF WAY, 50–388, 569; 51–122.

1. The establishment of a fish hatchery on lands reserved for a national

monument, on which there are no lakes or streams or other natural habitats of fish, would not be conducive to the conservation or development intended by such reservation, nor is it one of the privileges specified in the act of August 25, 1916, for which the Secretary of the Interior is authorized to issue a permit. 57–497

NATIONAL PARKS

See RIGHT OF WAY, 41–13; 50–388, 569; 51–122.

1. Instructions of November 10, 1924, exchange of public lands in Utah for privately owned lands in the Utah and Zion National Parks, act of June 7, 1924. (Circular No. 964.) 50–662

2. Lands withdrawn by section 1 of the act of February 28, 1911, for the benefit of the city of Seattle, and not within the Cedar River Basin, are not restored to their former status by section 2 of that act until the survey has been completed and approved by the Secretary of the Interior. 43–525

NATURALIZATION

See ALIEN; CITIZENSHIP; HOMESTEAD, 43–116.

1. The fact that an honorably discharged soldier is entitled under section 2166, Revised Statutes, to naturalization without previously declaring his intention to become a citizen does not entitle his widow, where he dies without making declaration of intention, to naturalization without previous declaration of intention on her part. 43–436

NAVAJO LANDS

See INDIAN LANDS, 49–424, 425.

1. Instructions of May 27, 1925, exchange of lands in the additions to the Navajo Indian Reservation, Ariz. (Circular No. 1012.) 51–152

NAVAL OIL RESERVE

See OIL, GAS, ETC., LANDS, 44–128.

NAVAL SERVICE

See MILITARY SERVICE.

NAVAL TIMBER RESERVE

See RESERVATION, 43–290.

NAVIGABLE WATERS

See LAKE, 50–180; RIPARIAN RIGHTS, 50–180; WORDS AND PHRASES, 50–79.

1. Sovereign rights have never been recognized by the United States as being vested in the Indian tribes, and the fact that lands were within an Indian reservation at the date of the admission of a State into the Union does not prevent the title to the beds of the navigable waters within the boundaries of the reservation from vesting in the State by virtue of its sovereignty. 49–452

2. Upon the admission of a State into the Union the title to all lands under the navigable waters within the State inures to the State as an incident of sovereignty, and the laws of the State govern with respect to the extent of the riparian rights of the shore owners. 50–679

NEBRASKA

See HOMESTEAD, XIV; INDIAN LANDS, 48–221, 222; KINKAID ACT.

NEVADA

See ARID LANDS, 50–333; RECLAMATION, 49–328.

NEW MEXICO

See CITIZENSHIP, 46–320; NATIONAL FORESTS, 49–645; OIL, GAS, ETC. LANDS, 49–580; RECLAMATION, 50–309; SCHOOL LANDS, 44–137, 460; 46–217, 396; 48–11, 561; 50–219; SMALL HOLDING CLAIMS, 45–80, 617.

1. Instructions of January 23, 1917, concerning alleged unlawful inclosure of public lands in New Mexico. 45–607

2. Instructions of September 13, 1922, small holding claims in New Mexico, act of June 15, 1922. (Circular No. 849.) 49–275

3. Instructions of September 19, 1922, exchange of lands in San Juan, McKinley, and Valencia Counties, N. Mex., act of March 3, 1921. (Circular No. 850.) 49–281

NEZ PERCE LANDS

See INDIAN LANDS, 43–508.

NITRATE LANDS

See OIL, GAS, ETC., LANDS, 45–77; SCHOOL LANDS, 44–120.

1. Regulations of March 20, 1915, under act of July 17, 1914, concerning agricultural entries of nitrate lands. 44–32

NONCONTIGUOUS TRACTS

See HOMESTEAD, 47–197; SETTLEMENT, 41–375.

NONRESIDENCE HOMESTEADS

1. Instructions of August 25, 1917, under act of August 10, 1917 (Idaho). 46–181

NORTH DAKOTA

See INDIAN LANDS, 49–354; 50–557; SCHOOL LANDS, 44–390.

NORTHERN PACIFIC RAILWAY

See INDIAN LANDS, 45–17, 193; RAILROAD GRANT; RAILROAD LANDS, 46–1, 4, 98; SCHOOL LANDS, 44–26.

1. Instructions of May 2, 1919, regarding settlers on Northern Pacific Railway Co. indemnity lands in Montana. (Circular No. 643.) 47–138

2. The department will not at this late date question the right of the Northern Pacific *Railway* Co. to select lands under the act of March 2, 1899, as successor to the Northern Pacific *Railroad* Co., on the ground that at the date of that act the Northern Pacific *Railroad* Co., named as grantee therein, had been foreclosed and was no longer a going concern, and that the act was therefore ineffective for want of an existing grantee. 45–6

3. One who abandons settlement on a tract in conflict with the Northern Pacific Railroad Co. under its grant, and thereafter exhausts his homestead right by perfecting an entry under the general provisions of the homestead laws, is not entitled to any adjustment under the provisions of the act of July 1, 1898. 47–161

NOTARY PUBLIC

See AFFIDAVIT; CONTEST, 42–325; MARRIAGE, 46–484; OFFICERS.

1. A notary public may be designated under rule 28 of Practice, by order of the register and receiver, to take testimony in a contest case. 43–330

2. The proviso in the act of June 29, 1906, amending section 558 of the Code of the District of Columbia, which provides that no notary public shall be authorized to administer oaths in connection with any matter before any of the executive departments in which he is employed as counsel, attorney, or agent, applies to all notaries public, in the District of Columbia or elsewhere, who practice as attorneys before any of the executive departments. 42–526

3. An affidavit of contest verified before the wife of contestant is insufficient under the act of June 29, 1906. 47–279

4. The act of July 28, 1917, clearly contemplates that an affidavit be made the basis of all contests thereafter initiated against homestead entrymen, and a purported affidavit to which contestant's name is signed by another, and executed before a notary public then acting as his attorney, is an absolute nullity, and affords no valid basis for contest. 47–146

5. Section 558 of the Code of the District of Columbia, as amended by the proviso to the act of June 29, 1906, which prohibits the administer-

ing of oaths by notaries public in connection with matters pending before any of the departments of the United States Government in which they are employed as counsel, attorney, or agent, or in any way interested, applies to all such persons, whether residing in the District of Columbia or elsewhere. 50–17

NOTICE

See Appeals, 50–496; Coal Lands, 42–571; 50–299, 300; Contest, 44–373; 45–215; 48–516, 551; 49–260, 374; Contestant, 44–367; 45–467, 548; 48–267; Final Proof, 43–66, 216; Homestead, 42–214, 471; 46–482; 50–5; 51–174, 519, 584; Indian Lands, 49–131, 156, 421; Mining Claim, 41–369; 42–550; 43–396; 48–6; 50–291, 577; Practice, VIII; Survey, 44–327.

OATH

See Affidavit; Fees, 42–195, 196; Practice, 46–474; Witnesses, 42–170.

OCCUPANCY

See Coal Lands, 48–122, 226, 332; Homestead, 45–219, 315, 325; 48–293; 49–50, 245, 278, 374, 597, 653; 51–258, 511, 513, 584; Indian Lands, 48–362; Isolated Tracts, 50–239; Land Department, 49–253; Mining Claims, 48–630; 50–192; Residence; Settlement.

1. The mere occupancy of public land, without right under any statute to acquire title thereto, does not exclude it from appropriation by another under the public land laws. 45–315

OFFICERS

See Affidavit; Federal Employees, 50–412; Fees, 46–4; Final Proof, 45–514; 46–4, 72; 49–497; Indian Lands, 49–424, 425; Land Department, 49–465, 516; Practice, 48–415; 50–167.

1. Instructions of May 8, 1919. Execution of proofs, affidavits and oaths before deputy clerks of courts. (Circular No. 644.) 47–145

2. Instructions of June 21, 1922, officers and employees of General Land Office; circular of May 12, 1906, amended. (Circular No. 836.) 49–152

3. Under the rules applicable to matters pending before the Commissioner of the General Land Office, registers and receivers have no authority to take action or to make any notation upon their records until specifically directed to do so by him, other than to file, note, and transmit such papers as may be filed in connection therewith, or to report at the proper time that no action has been taken, if that be the fact. 48–215

4. The hours for the transaction of official business by United States land offices are from 9 a. m. to 4.30 p. m., and all such business should be transacted at the proper local land office and during office hours only. 49–326

5. The position of captain in the Officers' Reserve Corps is a place of trust and an office within the purview of sections 109 and 113 of the Federal Penal Code, and such officer is, therefore, precluded from practicing for remuneration before the Interior Department or any of its bureaus. 49–500

6. Section 452, Revised Statutes, which prohibits officers, clerks, and employees in the General Land Office from directly or indirectly purchasing or becoming interested in the purchase of any of the public lands, is not to be construed as including officers, clerks and employees of the Bureau of Reclamation. 50–175

7. Violation by a project manager of the departmental order of April 11, 1912, prohibiting superintendents of irrigation, engineers, or other officers or employees in responsible charge of a reclamation project, from acquiring any interest in property within that project, subjects him to disciplinary action, although the transaction may not be illegal. 50–175

8. A Territorial legislature does not possess the power to impose in any manner duties on a Federal officer, and, if such be attempted, he can not properly perform them unless they come within the scope of his duties as fixed by the Federal statutes. 50–365

9. Official papers in land matters executed before a United States Commissioner in her maiden name and under which she was commissioned should be accepted, in the absence of other objection, notwithstanding her marriage while holding such appointment. 50–649

OIL, GAS, ETC., LANDS

See Alaska; Coal Lands; Mineral Lands; Mining Claim; Patent; School Lands; Swamp Lands.

I. Generally

1. Instructions of June 15, 1912, under act of March 2, 1911, concerning oil locations made prior to date of the act. 41–91

2. Instructions of October 17, 1912, under act of August 24, 1912, governing agricultural entries of oil and gas lands in Utah. 41–583

3. Instructions of March 22, 1913, under act of February 27, 1913, governing selections of phosphate and oil lands by the State of Idaho. 42–18

4. Instructions of September 24, 1914, under act of August 25, 1914, concerning disposition of oil and gas in mining claims pending determination of title. 43–404

5. Instructions of November 20, 1914, under act of August 25, 1914, authorizing agreements with applicants for patents for oil lands in withdrawn areas. 43–459

6. Deposits of petroleum are mineral within the meaning of the act of July 27, 1866. 41–264

7. No title is acquired under or by virtue of a school indemnity selection until the same has been approved by the Secretary of the Interior; and where the lands embraced in a selection are classified as oil lands and withdrawn under the provisions of the act of June 25, 1910, the Secretary is without authority to approve the selection in the face of such withdrawal; but it should be rejected, without prejudice to the right of the State to submit showing with a view to securing reclassification of the lands and to apply anew therefor in event of their restoration. 41–592

8. The proviso to the act of June 25, 1910, saving from the force and effect of petroleum withdrawals the rights of *bona fide* occupants or claimants of oil or gas bearing lands who at that date were in the diligent prosecution of work leading to discovery of oil or gas, contemplates work of actual development with a view to discovery of oil or gas, and does not include efforts to secure capital to carry on work of development or to secure a purchaser to take over the property. 44–420

9. In the absence of specific legislation providing therefor, the Secretary of the Interior is without authority to enter into or make leases covering public oil and gas lands. 44–568

10. In performing the duty of passing upon the sufficiency of applications for classification of land as non-oil, the Commissioner of the General Land Office may submit such applications to the Geological Survey for consideration and report; and reports and recommendations made thereon by the Geological Survey, when adopted and acted upon by the commissioner, are as fully his action as if he had himself examined and acted upon such applications without aid of the Geological Survey. 45–170

11. Upon a hearing to determine whether an agricultural entryman should receive restricted or unrestricted patent to land included within the outboundaries of a petroleum withdrawal between the dates of entry and final proof, the withdrawal being *prima facie* evidence the land is oil

in character, the burden is on the agricultural claimant to establish that the land was not known to be such at the date of perfection of final proof. 46–46

12. Lands embraced within a petroleum withdrawal are thereby impressed with a *prima facie* mineral character; and the burden is upon the State to overcome this or suffer the rejection of its claim thereto under the swamp-land grant, which does not embrace mineral lands. 47–366

13. A withdrawal of land for inclusion in a petroleum reserve, based upon an examination and report of its mineral character, establishes *prima facie* its character as mineral, and one thereafter seeking classification of the land as nonmineral assumes the burden of proof to overcome such *prima facie* established mineral character. 45–464

14. A party seeking to question the accuracy of the boundaries of the known geological structure of a producing oil or gas field may file in the department an affidavit containing allegations of definite and specific geological facts which, if true, would tend to show such boundaries to be outside the geological structure, and such showing will be considered with a view to the reestablishment of the boundaries to accord with the true situation; but until the designation by the Geological Survey of a tract as within such known geological structure shall be revoked by the Secretary of the Interior the same will be observed and acted upon by the Land Department in the administration of the leasing act. 47–582

15. Section 2 of the act of June 25, 1910, expressly excepting homestead entries from the effects of a subsequent withdrawal, intends that such entries may be perfected only on condition that the lands are nonmineral and subject to disposition under the agricultural land laws, and a petroleum withdrawal made prior to submission of final proof impresses the land with a *prima facie* mineral character which makes it incumbent upon the claimant either to prove that it is of the character subject to his claim, or to accept a restricted patent under the act of July 17, 1914. 48–126

16. The rule of law that a withdrawal is ineffective as against one who prior thereto had done everything necessary to vest in him a complete equitable title, can not be invoked by a homesteader who made entry of lands before but did not submit final proof until after their inclusion within a petroleum reserve, and a patent issued upon such entry must contain a reservation to the United States of the oil and gas unless the entryman assumes the burden of proof and shows that the lands are in fact nonmineral in character. 48–155

17. Where a conflict arises between a coal-land application filed pursuant to section 2347, Revised Statutes, and an oil placer-mining location previously initiated, involving a tract of classified coal land, it must be held that said land is not subject to disposition under that statute as "vacant coal land of the United States not otherwise appropriated," if it is shown that the land was at the date of the filing of said application and continuously thereafter in the possession and occupancy of the mining locator, and that work thereon was prosecuted to a sufficient discovery of oil. 48–226

18. The operation of the mill site law, section 2337, Revised Statutes, is in terms limited to nonmineral land, and the Land Department has no authority to issue a limited patent thereunder for surface lands within a petroleum reserve. 48–243

19. The Land Department, to which is committed exclusively the determination of the character of the public lands, may, in the exercise of that jurisdiction, select its own instrumentalities and methods, and an executive withdrawal and inclusion within a petroleum reserve of public lands upon a recommendation of the Geological

Survey is one mode of classification which presumptively fixes their mineral character—provisionally, however, and subject to revocation upon further investigation or upon sufficient showing by a nonmineral claimant. 48–281

20. A transferee of a placer oil claim, to whom a patent is denied for the reason that the preliminary location was fraudulently made, is entitled to repayment under the act of March 26, 1908, of the moneys deposited by him pursuant to the requirements of the placer mining laws, where it does not appear that he or his legal representatives were guilty of any fraudulent action or either had knowledge or was chargeable with knowledge that fraud had been perpetrated by his predecessor in interest. 48–367

21. An Indian allotment may be allowed under section 4 of the act of February 8, 1887, for oil and gas lands with reservation of the mineral contents to the United States. 51–91

22. Where the definition of a geologic structure is revoked, the lands will be restored to filing substantially in the manner prescribed in the departmental instructions of April 23, 1924, Circular No. 929 (50 L. D. 387), relating to cases where existing prospecting permits are canceled. 51–235

II. Act of July 17, 1914

23. Regulations of March 20, 1915, under act of July 17, 1914, concerning agricultural entries of oil and gas lands. 44–32

24. The Land Department is without authority to issue limited patent under the act of July 17, 1914, for lands embraced in a school indemnity selection by the State of California, upon waiver by the transferee of the State of all right to the oil deposits therein, unless the State shall have first consented to the issuance of such restricted patent. 44–27

25. Section 3 of the act of July 17, 1914, providing that persons who in good faith locate, select, enter, or purchase, under the nonmineral land laws of the United States, any lands which are subsequently withdrawn, classified, or reported as valuable for deposits of oil or other minerals therein mentioned, may, upon application therefor and proof of compliance with the law under which the lands are claimed, receive patent therefor, with reservation to the United States of the deposits on account of which the lands were withdrawn, classified, or reported as valuable, together with the right to prospect for, mine, and remove the same, has no application to lands which at the date of that act were embraced within a naval petroleum reserve, to be held "for the exclusive use or benefit of the United States Navy." 44–128

26. The executive order of December 15, 1908, withdrawing certain lands in the Baton Rouge, La., land district, on account of the oil and gas deposits therein, specifically provided that all pending entries, etc., should be suspended pending investigation as to the character of the land and that final certificates should not in the meantime be issued thereon; and submission of final proof and issuance of the receiver's receipt for fees and commissions upon such suspended entries did not subject them to the operation of the confirmatory provisions of the act of March 3, 1891, so as to defeat the effect of the withdrawal or to preclude consideration of the adverse mineral report and the evidence taken at the hearing respecting the character of these lands, or bar application of the act of July 17, 1914, providing for the reservation to the United States of oil and gas deposits and the patenting of the land to entryman subject to such reservation. 44–178

27. Section 9 of the regulations of March 20, 1915, under the act of July 17, 1914, providing for agricultural entries of lands withdrawn, classified, or reported as valuable for phosphate, nitrate, potash, oil, gas, or asphaltic

minerals, amended to require that nonmineral entrymen of lands subsequently so withdrawn, classified, or reported, shall be notified of their right to apply for restricted patent therefor under section 3 of said act, and that upon failure to file application for patent within 30 days or to apply for classification of the land as nonmineral, the entry will be canceled. 45–77

28. The act of July 17, 1914, providing for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals, has no application to lands within the former Kiowa, Comanche, Apache, and Wichita Reservations, which have been at all times since opened to entry subject to disposition exclusively under nonmineral laws. 47–331

29. An equitable title in land does not accrue to a homestead claimant until he has done all that the law and the authoritative regulations prescribe, and one submitting final proof, after the creation of a petroleum reserve, upon lands entered under the homestead laws prior to their withdrawal, must, unless he proves that the lands are in fact nonmineral, apply for a restricted patent as provided by the act of July 17, 1914, or suffer cancellation of his entry. 48–18

30. Patents issued upon nonmineral entries made under the acts of July 17, 1914, and December 29, 1916, for lands covered by prospecting permits or leases, should contain recitals to the effect that the entries were allowed subject to the conditions of section 29 of the act of February 25, 1920, and to the rights of the prior permittees or lessees to use so much of the surface as is required for mining operations, without compensation for damages to crops and improvements resulting from the use of the lands for proper mining purposes. 51–166

31. The act of July 17, 1914, confers upon railroad grantees the right to select the surface of lands, which, except for that act, would be excluded from the grants on account of their mineral character, but neither a railroad company nor any person claiming under a railroad grant is entitled to a preference right to a permit or lease under the act of February 25, 1920, by reason of such selection. 51–196

III. Leasing Act of February 25, 1920—Generally

See Burden of Proof, 49–449; Contest, 49–260, 261; Homestead, 48–350; 49–196, 324, 460, 608, 610, 659, 660, 671; Indian Lands, 49–139; Relinquishment, 49–173, 344; Repayment, 49–344; School Lands, 49–436; Timber Trespass, 49–484.

32. Oil and gas regulations of March 11, 1920, act of February 25, 1920. (Circular No. 672, reprint.) 47–437

33. Oil and gas operating regulations of June 4, 1920, act of February 25, 1920. 47–552

34. Instructions of January 12, 1921, relative to extension of time under oil and gas permit. 47–612

35. Instructions of January 15 1921, amending paragraph 10(a) of the oil and gas regulations of March 11, 1920. (Circular No. 572.) 47–613

36. Circular of June 15, 1921, adding paragraph 8 (a) to oil and gas regulations; reward for discovery. (Circular No. 761.) 48–152

37. Regulations of December 8, 1921, governing payment of annual rental under oil and gas leases. (Circular No. 795.) 48–340

38. Instructions of April 8, 1922; showing required of nonmineral claimants in certain States under leasing law. 48–629

39. Instructions of May 5, 1922, relating to applications for leases by oil and gas prospecting permittees under section 14, act of February 25, 1920. (Circular No. 823.) 49–104

40. Instructions of February 5, 1923, oil and gas permits and leases for

lands in Executive order Indian reservations. 49–431

41. Instructions of February 24, 1923, refunding prepaid rentals on oil and gas lands; rule 4, circular No. 795, modified. (Circular No. 874.) 49–459

42. Instructions of September 22, 1925, procedure relating to the administration of the mineral leasing laws. 51–219

43. Instructions of October 16, 1925, oil and gas regulations; paragraph 4 (c), Circular No. 672, amended. (Circular No. 1036.) 51–239

44. Instructions of April 28, 1924, rights of settlers to oil and gas deposits, act of February 25, 1920. (Circular No. 932.) 50–400

45. The Indian title to the area in the State of Colorado formerly occupied by the Uncompahgre and White River Utes being extinguished, and Congress, in declaring same to be subject to disposition under the public land laws, having made no exception that would preclude appropriate disposition under laws applicable to other tracts of like character, such lands and deposits therein are subject to the provisions of the leasing act of February 25, 1920, notwithstanding the fact that under the terms of agreement the Indians would be entitled to the proceeds from disposition thereof. 47–560

46. The provisions of the act of February 28, 1891, relating to the leasing by allottees of lands within Indian reservations, were applicable only to such reservations as those created by treaty or congressional action, and prior to the enactment of the act of February 25, 1920, no authority existed for the leasing of lands withdrawn from the public domain by Executive order for the use of the Indians. 49–139

47. Land that is not within a designated oil or gas structure is nevertheless to be treated as valuable for oil and gas when embraced within a prospecting permit, and a homestead entry made subordinate thereto must be subject to the provisions and reservations of the act of July 17, 1914. 48–108

48. A protest by an oil placer mining claimant against the allowance of a prospecting permit, containing no allegation which, if substantiated by evidence adduced at a hearing, shows that the protestant is entitled to complete his claim under the placer mining laws or to use the same as a basis for a permit or lease under any of the relief provisions of the act of February 25, 1920, is not sufficient to defeat a permit application filed under section 13 of that act. 48–147

49. The provisions of the surface act of July 17, 1914, and those contained in the leasing act of February 25, 1920, are not in conflict, but are a complement of each other, to the extent that by the former, mineral rights and all incidents essential thereto are excluded from homestead entries, while by the latter, the rights pertaining to the estate of the surface claimant are duly respected and protected. 48–150

50. The courts, not the Land Department, have direct jurisdiction to determine questions pertaining to actual physical possession of lands in cases arising from conflicts between claimants under the acts of July 17, 1914, and February 25, 1920, respectively. 48–150

51. The general leasing act of February 25, 1920, is applicable to oil or gas bearing lands of the United States, if there be any, in the bed of Red River, Oklahoma, adjacent to the Texas boundary, irrespective of the fact that the preexisting mining laws were not in operation in the former State, and an application to acquire such areas by Valentine scrip, unsupported by nonoccupancy and nonmineral affidavits, must be denied, inasmuch as such scrip is locatable only on unoccupied, nonmineral public land. 48–277

52. An oil and gas prospecting permit or a lease consequent thereon,

granted pursuant to the act of February 25, 1920, does not constitute an "entry," "location," or "other disposal" of the land included therein, within the meaning of those terms as contemplated by section 24 of the water power act of June 10, 1920. 48–459

53. The authority conferred upon the Federal Power Commission by subdivision (h) of section 4 of the act of June 10, 1920, to make such rules and regulations not inconsistent with the purposes of the act as may be necessary and proper for the purpose of carrying out its provisions, does not clothe that commission with jurisdiction to require the insertion of restrictions in oil and gas prospecting permits and leases consequent thereon, issued by the Secretary of the Interior pursuant to the act of February 25, 1920, for lands in power-site withdrawals and reserves for power purposes. 48–459

54. Proceeds from the rents and royalties derived through leases made pursuant to the act of February 25, 1920, of lands within Indian reservations created by Executive order, should be deposited in the United States Treasury and held in a special fund to await such disposition as Congress may see fit to direct. 49–139

55. Paragraph 31 of the oil and gas regulations of March 11, 1920, promulgated pursuant to the authority contained in section 38 of the act of February 25, 1920, was merely intended for the administrative purpose of directing proper disposition of and accounting for moneys paid in connection with applications for oil and gas prospecting permits, and in that respect is to be deemed as merely supplemental to paragraph 85 of the General Accounting Circular of August 9, 1918. 49–344

56. Where a permittee upon the discovery of oil or gas is awarded a 5 per cent lease and a sliding scale lease under the act of February 25, 1920, the drilling regulations set forth in subdivision (b) of section 2 of the lease must be complied with as to both tracts, and if the lessee assigns one of his leases the assignee becomes obligated to the same extent as the original lessee. 49–445

57. Where a permittee upon the discovery of oil or gas is awarded a 5 per cent lease and a sliding-scale lease and subsequently assigns one of his leases, his failure to comply with the drilling regulations under the lease retained by him does not impair the rights of the sublessee under the assigned lease. 49–445

58. Where a permit is assigned prior to the discovery of oil or gas, the assignee becomes subrogated to all of the rights of the original permittee, and obligations with respect to drilling under any lease or leases subsequently awarded are assumed to the same extent as if discovery had been made prior to the assignment. 49–445

59. Where permit rights are assigned to several individuals as to separate tracts and upon discovery of oil or gas a separate lease is awarded for each specific tract, the assignees assume separate and distinct undertakings that obligate them to comply with the drilling requirements with respect to each tract. 49–445

60. While the drilling requirements under an oil and gas lease can not be waived, yet where the enforcement of the obligation to proceed to drilling appears to the Secretary of the Interior to be inequitable in any particular case, he may grant a suspension of the requirement. 49–445

61. The date of the filing of the application, not the date of the granting of the lease, determines the time from which the annual rental begins to accrue, where an oil and gas lease is granted pursuant to the act of February 25, 1920, to an applicant who, from and after the filing of an application therefor, has had uninterrupted, exclusive possession and use of the premises. 49–482

62. Where the title to lands abutting upon a nonnavigable lake remains in the United States, the Government, as a riparian proprietor, may grant permits and leases pursuant to the act of February 25, 1920, of the lake bed separate and apart from the uplands, but patents for the uplands must contain appropriate reservations. 50–281

63. Public lands withdrawn for a reservoir site, or other similar purpose, which contain deposits of oil or gas, may be restored and leased pursuant to the act of February 25, 1920, where their restoration can be effected without damage to the project, or unless, because of improvements placed thereon, the lands have become subject to disposition only by sale for the benefit of the reclamation fund. 50–308

64. One well drilled in an advantageous position upon a geologic structure covering a large area is usually a sufficient test, if successful, to warrant the definition of the entire structure as producing and subject to lease. 50–546

65. Where a report by the Geological Survey, which shows that land within an unperfected nonmineral entry is prospectively valuable for its oil and gas contents, is lacking in the definiteness contemplated by the regulations issued pursuant to the leasing act, and is followed by a more specific report based upon the same facts, the first report is sufficient to put the nonmineral character of the land in issue, and submission of final proof prior to the supplemental report will not shift the burden of proof upon the Government. 50–277

66. Section 15 of the act of February 25, 1920, does not require payment of royalty on the oil or gas used for production purposes on permit lands, or that is unavoidably lost. 51–283

IV. Prospecting Permits

See HOMESTEAD, 49–324.

67. Instructions of May 11, 1921, amending paragraph 4 (h) of oil and gas regulations of March 11, 1920, relative to filing of bonds with applications for prospecting permits. (Circular No. 754.) 48–112

68. Instructions of October 14, 1921; procedure as to noncompliance with terms of oil and gas permit. (Circular No. 785.) 48–234

69. Instructions of April 7, 1922, relative to oil prospecting permits in power site reserves; Circular No. 672, amended. 48–628

70. Instructions of January 14, 1924, oil and gas prospecting permits and leases embracing lands within Executive order Indian reservations; additional requirements. 50–238

71. Instructions of April 5, 1924, expiration of prospecting permits, acts of October 2, 1917, and February 25, 1920. (Circular No. 926.) 50–364

72. Instructions of July 23, 1926, drawings upon cancellation of oil and gas permits; circular No. 929, amended. (Circular No. 1084.) 51–504

73. Instructions of October 19, 1926, oil and gas permit applications made by attorneys in fact. (Circular No. 1099.) 51–602

74. Upon the granting of an oil-prospecting permit, rights thereunder attach as of the date of the filing of the application. 48–108

75. The general rules of practice relating to service of notice are applicable to oil prospecting permit cases in which the question of preferred right is involved with respect to unperfected and patented entries containing reservation of the minerals to the United States, and the regulation which requires personal service is to be construed to include actual service by registered mail, when possible, or by publication when proper showing can be made that the person to be served can not be found. 48–110

76. Lands beneath the waters of a navigable lake which is surrounded by tracts that have been patented by the Government or are embraced within existing claims or pending ap-

plications are not subject, apart from the abutting uplands, to the oil prospecting permit or lease provisions of the act of February 25, 1920. 48–129

77. Ownership by the Government of lands abutting upon a meandered nonnavigable lake carries with it the same rights with respect to the adjacent submerged land that private ownership does, and where the title to such land is vested in the United States, an oil prospecting permit granted under the act of February 25, 1920, embracing the Government-owned shore lands includes the right to prospect the submerged lands. 48–129

78. An oil and gas prospecting permit is not subject to a contest by a third party and an application therefor can not be entertained. 48–158

79. The provision contained in section 2 of the act of May 14, 1880, as amended by the act of July 26, 1892, which grants a preference right of entry to a successful contestant, has no application to contests against permits to prospect for oil and gas issued pursuant to the act of February 25, 1920, nor does the leasing act itself confer any such right as a reward for the procuring of the cancellation of permits through contest. 49–406

80. As between two conflicting applications for an oil and gas prospecting permit, no such preference right is acquired by the second applicant by reason of his previous location of the land and posting of notice thereupon as will defeat a proper application filed prior thereto. 48–186

81. The filing of an appeal and showing of naturalization in the department, instead of the local office, in a case involving an application for an oil and gas prospecting permit, is irregular, but it is merely such an irregularity as may be waived by the department in the absence of an adverse claim to the land. 48–215

82. While an oil and gas prospecting permit can not be issued under the act of February 25, 1920, to an alien, yet there is nothing in the law or the practice of the Land Department that forbids the issuance thereof to a citizen who is naturalized after the filing of the application but before the granting of the permit. 48–216

83. An application for a second homestead entry under the act of September 5, 1914, filed by one having the requisite qualifications assumes, during the pendency of action as to the question of its allowance, the status of an entry within the operation of the oil-leasing act of February 25, 1920, irrespective of whether or not he executed a formal relinquishment, and confers upon the applicant a right to prospect the land superior to that of a prior applicant for a permit without a preference right. 48–543

84. An oil and gas prospecting permit is not an "entry" within the meaning of that term as it is used in the statutes relating to the public lands. 48–580

85. Immediately upon the cancellation, by voluntary relinquishment or otherwise, of an unrestricted homestead entry during the pendency of an oil and gas permit application, adversely to the entryman, the rights of the permit applicant, all else being regular, attach and become superior to those of a junior homestead applicant. 48–622

86. The right of a third party to file an application for an oil and gas prospecting permit for a tract covered by the unrestricted homestead entry of another is expressly recognized by section 12 (c) of the departmental regulations of March 11, 1920, but the granting of a permit is dependent upon a future amendment of the entry reserving the mineral contents to the United States, and the exercise by the entryman of a preference right, if any, to a permit pursuant to section 20 of the leasing act. 48–622

87. Prior to the cancellation by the Commissioner of the General Land Office of an outstanding oil and gas prospecting permit and notation thereof upon the records of the local land

office, no other person will be permitted to gain any right to a permit for the same class of deposits by the filing of an application, or by the posting of a notice of intention to apply for such a permit. 49–171

88. A permit to prospect for oil and gas issued pursuant to the act of February 25, 1920, has a segregative effect until canceled and notation of the cancellation made on the records of the local land office, and no special or preferred right to appropriate the deposits covered by it can be acquired under an application which is accompanied by a protest that ultimately results in its cancellation. 49–406

89. Noncompliance by a permittee with the terms of an oil and gas prospecting permit does not make the lands embraced therein "unreserved, unappropriated" public lands within the meaning of those terms as they are used in section 11 of the act of June 20, 1910. which specified the character of lands that may be selected under that act by the State of New Mexico. 49–580

90. The language contained in paragraph 9 of the oil and gas regulations of March 11, 1920, declaring that in the absence of discovery of oil or gas within the period of a prospecting permit or extension thereof, the permit will thereupon terminate and the lands automatically revert to their original status, does not authorize another to file an application to prospect for the same deposits in the lands prior to the cancellation of the permit by the Commissioner of the General Land Office and notation thereof upon the records of the local land office. 50–201

91. An oil and gas prospecting permittee can not, by filing a relinquishment, acquire a preference right to apply for a new permit, but will, upon the restoration of the land, be accorded merely the privilege of filing application in accordance with existing regulations. 51–649

92. The allowance of an oil and gas prospecting permit for land embraced within a previously issued permit, still of record at the time that the second permit was allowed, was erroneous and confers no rights upon the permittee that can be recognized after the first permit has been canceled upon the records of the local United States land office. 51–118

93. An applicant for an oil and gas prospecting permit is charged with notice of the established practice and existing regulations governing the cancellation of permits and the restoration of the lands to further disposition. 51–343

94. Where permits are canceled upon relinquishments or because of defaults of permittees, the lands covered thereby will not be restored to further disposal under the leasing act if test wells have been or are about to be drilled upon the geologic structure which includes those lands, pending the completion of the wells. 50–546

95. The notation upon the local records of the cancellation of an oil and gas permit made contrary to existing regulations is without effect, and those seeking like permits for the land are put on notice as to the authority therefor and are not entitled to rely thereon in support of a claim of priority, though such notation, if in fact relied on, may be given equitable consideration in the absence of adverse claims. 51–343

96. An application for an oil and gas prospecting permit under the act of February 25, 1920, does not have an exclusive, segregative effect, and failure on the part of the applicant to pay the requisite filing fees until long after the time allowed by the regulations, is, in the absence of a showing of proper cause for the delay, a ground for the rejection of the application where an adverse application had been filed prior to the payment of the full filing fees. 50–581

97. Neither the leasing act of February 25, 1920, nor the regulations issued thereunder, give exclusive segregative effect to an application for a

prospecting permit and, until the department has satisfied itself as to the qualifications of the first applicant and issued a permit to him, applications may be filed by others and, if the first application be rejected, their claims will be considered in the order initiated until one is found qualified to receive a permit. 50–339

98. The filing of an allowable oil and gas prospecting permit application has a segregative effect and confers upon the applicant a priority of right over any adverse interest thereafter sought to be initiated. 51–649

99. An application for an oil and gas prospecting permit embracing lands within a homestead entry, filed by the entryman during pendency of action by the Land Department upon the question of allowance of his final proof, constitutes an admission that the land had a prospective oil and gas value and amounts to an election to take a restricted patent in accordance with the provisions of the act of July 17, 1914. 50–185

100. A permittee under an oil and gas prospecting permit is not authorized to injure the permanent improvements of a stock-raising homestead entryman, and damages to crops must be compensated for as provided by section 9 of the act of December 29, 1916. 50–192

101. A stock-raising homestead entryman does not have a sufficient interest in the reserved mineral deposits in the lands within his entry to entitle him to protest against the issuance of an oil and gas prospecting permit, except it be in his capacity as a citizen desiring to prevent the perpetration of a fraud upon the Government. 50–192

102. The act of February 25, 1920, does not contain any provision whereunder a settler upon public lands within a particular State may be awarded a permit to prospect for oil and gas therein in preference to a resident of another State. 50–208

103. Where an application for a prospecting permit is denied because of the inclusion of the lands within a producing oil and gas field, such application can not be revived by reinstatement upon a subsequent restoration of the lands, but they will be open to prospecting after their restoration as though no application had been filed. 50–213

104. The Land Department deals only with the real parties in interest with reference to the issuance of oil and gas prospecting permits, and equities entitling one to a permit must be asserted and exercised by the party who is predicating a preference right thereupon. 50–339

105. The principle of group development, recognized by the department in connection with the granting of extensions of time for the performance of the conditions in prospecting permits issued pursuant to the leasing act, has no application to like development of more than 160 acres under the placer mining laws by one not in possession, or entitled against others to possession of the lands claimed. 50–349

106. Nothing in the act of February 25, 1920, either directs or suggests that an applicant for an oil and gas prospecting permit shall be entitled in every instance to be awarded a permit for the maximum area authorized by the act. 50–353

107. Where a permit has been applied for or issued under the leasing act, and the land has not been withdrawn or classified as valuable for oil or gas deposits, a conflict between the permittee and a nonmineral entryman who settled upon the land prior to the initiation of the permit will be adjudicated pursuant to section 12(c) of the oil and gas regulations, and the entryman will be afforded an opportunity to prove that the lands are nonmineral in character. 50–370

108. The provision in section 4 of the oil and gas regulations of March 11, 1920, relating to the 30-day sus-

pension in local offices of permit applications to await the presentation of preference right claims before transmittal to the General Land Office, applies only to applications for lands subject to disposal under the leasing act: but an application for prospecting land covered by an uncanceled permit, or otherwise segregated, should be rejected at once by the local officers, subject to the right of appeal, and transmitted in due course to the Commissioner of the General Land Office. 50–395

109. While the department will refuse to approve the assignment of a mere application for an oil and gas prospecting permit, yet it may recognize, in connection with such application, persons who desire to become associated with the permittee in development of the land, and, in such event, will issue a permit to the applicant and his associates, if they be qualified. 50–493

110. No such right is acquired by the filing of an oil and gas prospecting permit application under the act of February 25, 1920, as will prevent its allowance from being controlled by circumstances arising after its presentation or its rejection under later statutes. 50–534

111. So long as an oil and gas permit stands in the name of a permittee, he alone is responsible to the department for compliance with its drilling requirements, and if his operating agent, or his drilling contractor, is not complying with the terms of the permit, the duty devolves upon the permittee to enforce such compliance, and his diligence will be tested by his efforts in that direction. 50–610

112. The granting of an oil and gas prospecting permit precludes, as long as the permit is in force, the appropriation of the land for metalliferous minerals under the United States mining laws. 50–623

113. A contribution to the cost of a test well on lands covered by a prospecting permit held by another does not excuse a permittee from ultimately drilling the area covered by his permit, but merely constitutes, in proper cases, diligence sufficient to warrant an extension of time within which to begin drilling as authorized by the act of January 11, 1922. 50–652

114. The right of an entryman under the agricultural land laws to file a waiver of mineral rights, if he desires, at any time prior to issuance of patent, and thereupon himself seek a permit or lease under the leasing act, ceases to exist when he permits another to acquire, after the vesting of equitable title in him under the entry, lawful rights that would be adversely affected. 50–665

115. A prospecting permit may not be issued to include land, either withdrawn or unwithdrawn, that is covered by an unpatented nonmineral entry allowed without any reservation of the oil and gas contents to the United States, so long as the entry subsists without such reservation. 51–162

116. A report by the United States Geological Survey which concludes that land within an unpatented nonmineral entry allowed without any reservation of the oil and gas contents to the United States, has no prospective oil value, is sufficient cause for the rejection of a prospecting permit application filed by one other than the entryman. 51–162

117. As to vacant, unappropriated lands, or lands of which the possible oil and gas content is reserved to the United States, the Department does not decline to issue permits to prospect for oil and gas on the ground that the lands are not shown to have any prospective value for those minerals. 51–162

118. The term "lease" used in section 29 of the leasing act of February 25, 1920, includes prospecting permits issued under that act. 51–166

119. The Land Department has the authority to issue permits to prospect for oil and gas pursuant to the act of February 25, 1920, on lands within the

primary limits of railroad grants, which, if nonmineral in character, would inure to the grantees under those grants. 51–196

120. The right of a permittee under section 34 of the act of February 25, 1920, to appropriate timber standing upon the land covered by his permit for use as fuel in drilling operations is restricted to unpatented lands upon which there is an abundance of timber and where its removal will not materially affect the use of the land by the surface entryman. 51–251

121. A prospecting permittee under the act of February 25, 1920, will be granted the privilege of taking timber from other public lands outside of the permit area pursuant to the acts of June 3, 1878, and March 3, 1891, only when other fuel is not available at reasonable cost. 51–252

122. A prospecting permittee under the act of February 25, 1920, is a *bona fide* resident of the State in which the land covered by the permit is located for purposes within the operation of the acts of June 3, 1878, and March 3, 1891. 51–252

123. One who applies for a permit to prospect for oil and gas on lands embraced within his unrestricted homestead entry must file an express consent to the amendment of his entry, subjecting it to the reservations required by the act of July 17, 1914, or suffer rejection of his application. 51–267

124. While the requirement in the act of February 25, 1920, that an application for an oil and gas prospecting permit must be sworn to is mandatory, yet an application which does not appear upon its face to have been under oath is not a nullity, if the oath was properly and timely administered and that fact is later satisfactorily shown. 51–285

125. An oil and gas prospecting permit application filed after the withdrawal of the lands for resurvey because of irregularities in and extensive obliterations of the original survey must describe the lands by metes and bounds, and a description of subdivisions in terms of the original survey will not entitle the applicant to take those subdivisions wherever found according to the approved plat of resurvey. 51–303

126. The department is without authority to issue an oil and gas prospecting permit for land covered by the water of a reservoir held under a grant made pursuant to the act of March 3, 1891. 51–305

127. A permit application, accompanied with consent of the entryman to a reservation of the oil and gas deposits in his unrestricted homestead entry, does not authorize the department to impose such a mineral reservation where the lands have been reported by the Geological Survey as being without prospective value for oil and gas and in the absence of a showing on the part of the permit applicant sufficient to overcome the conclusions of the Geological Survey as to the character of the land. 51–336

128. Where the cancellation of more than one oil and gas prospecting permit becomes effective on the same day the lands will become subject to application without regard to the particular areas embraced in each of the canceled permits, and where, in such cases, drawings are required, a single permit may be awarded to prospect all of the lands, if conformable to the rules and regulations as to acreage and compactness. 51–399

129. An oil and gas prospecting permit application executed by an agent is invalid and without segregative effect if he is not an authorized attorney in fact. 51–587

130. An application for an oil and gas prospecting permit for land embraced within an unrestricted homestead entry is not a nullity, but it may be regarded as a report of mineral value sufficient to inquire as to whether conditions warrant the pro-

curement of mineral waivers pursuant to the act of July 17, 1914. 51–622

131. The determination of the question as to which of two conflicting claimants, an agricultural entryman or an oil and gas permittee, has the paramount right to the exclusive use of the surface, is dependent upon priority in the initiation of the claims. 51–622

132. One who files an application for an oil and gas prospecting permit for land embraced within an existing homestead entry during the pendency of a contest, does not acquire surface rights superior to those of the successful contestant who timely exercises his preference right under the agricultural land laws. 51–622

133. A defect in an oil and gas prospecting permit application, due to violation of the rules as to compactness of the tracts applied for, is curable by amendment of the application within the specified time, and, when thus cured, does not affect the rights of the applicant thereunder. 51–622

V. Alaska

134. Instructions of March 28, 1921, relative to oil prospecting permits in Alaska; section 10 (*a*), oil and gas regulations modified. 48–46

135. Regulations of August 12, 1922, oil and gas permits and leases in Alaska. (Circular No. 845.) 49–207

136. Instructions of February 12, 1925, notation of cancellation of oil and gas permits in Alaska; Circular No. 929, modified. (Circular No. 979.) 51–50

137. The provision in section 13 of the act of February 25, 1920, which gives a preference right to an oil and gas prospecting permit for six months following the marking and posting of notice upon lands in Alaska, is to be construed to mean for six calendar months thereafter, and that the time shall expire at the close of an official day of the local office in the sixth month following posting which corresponds to the date of posting, unless such day does not occur in the sixth month, in which event the last day of that month will mark the expiration of the preference right period. 50–493

138. A permittee of lands in Alaska who has drilled beyond the depth (2,000 feet) required by section 13 of the act of February 25, 1920, and who desires to perform further drilling, is as much entitled to an extension of time under that section, for not exceeding two years under the same circumstances, as would a permittee of lands in the United States. 57–177

VI. Section 13 Permits

139. Instructions of April 23, 1921, relative to applications for section 13 oil prospecting permits for lands subsequently included in designated producing structures. 48–98

140. An applicant for a prospecting permit under section 13 of the act of February 25, 1920, is not required to serve notice on the owner of lands patented to a railroad company with reservation of the oil and gas under the act of July 17, 1914, inasmuch as claimants of railroad grant lands are excepted by section 20 of the former act from the preference right to permits therein. 48–175

141. The act of February 25, 1920, contemplates that the right to an oil and gas prospecting permit may be initiated by filing an application therefor, and it is clear that it was not the intention of Congress by the insertion of the condition in section 13 thereof that "the applicant shall, prior to filing his application for permit, locate such lands," when construed *in pari materia* with other provisions of said section, to require a demarcation of the boundaries on the ground as a condition precedent to the validity of such application. 48–185

142. Prospecting permits can not be granted within the geological structure of a producing oil or gas field, and the Land Department did not intend by its instructions of April 23, 1921, to recognize any right in an ap-

plicant who applied under section 13 of the act of February 25, 1920, to prospect lands which, because of delay in action upon the application, are subsequently designated as within such a field, although not designated, yet so known and existing at and prior to the filing of the application. 48–213

143. The definition of a structure as within a producing oil and gas field is in effect a withdrawal of the lands from appropriation under section 13 of the leasing act, and an application for a permit, even though filed prior to such definition, does not confer any rights on the applicant that will inure to his benefit upon the exclusion of the lands by reason of the redefinition of the structure. 50–213

144. Where a homestead entry, patented with reservation of the oil and gas by the United States, has been sold or transferred subsequently to January 1, 1918, the transferee does not acquire a preference right under section 20 of the act of February 25, 1920, to prospect for oil or gas upon the patented land, but having become the sole owner of the land, subject to the reservation contained in the patent, he may, in the absence of other sufficient objection, be granted a prospecting permit under section 13 of the leasing act. 48–214

145. The provision in section 13 of the act of February 25, 1920, relating to the limitation of length of a tract of land that may be included in an oil and gas prospecting permit, is directory, not mandatory, and a permit may be granted under that section for the prospecting of a tract, the length of which exceeds two and one-half times its width, where the conditions are such that, because of prior disposals, a reasonable area of land in compact form as prescribed by the act is not available. 48–239

146. The denial of an application for an oil and gas prospecting permit under section 13 of the act of February 25, 1920, is a proper exercise of the discretionary authority under that act, if the lands to be prospected were at the time of the filing of the application within a known geological structure, although not designated as such until subsequently thereto. 48–355

147. When the limits of a producing oil and gas field are determined by the Geological Survey, and the same designated by it as such, the designation relates back to the time that the production began, and the filing of an application for a prospecting permit for lands then known to be within a producing oil field, although not yet designated, does not confer upon the applicant any vested right or constitute a ground upon which the granting of a permit under section 13 of the act of February 25, 1920, can be enforced by him. 48–355

148. Lands not covered by permit within the geologic structure of a newly proved oil and gas field, are not subject to prospecting under section 13 of the act of February 25, 1920, but should be offered for lease under section 17 of that act. 50–546

149. Definition of a structure as within a producing oil and gas field is in effect a withdrawal of the lands from appropriation under section 13 of the leasing act, and a pending application to amend a previously issued permit to include lands on the structure, filed after such definition, does not confer any right upon the applicant to have his application allowed upon revocation of the definition. 51–235

150. Where a test well has been or is about to be drilled upon the geologic structure which includes lands for which an application has been filed for a permit to prospect for oil and gas under section 13 of the leasing act the Secretary of the Interior has, in the discretion vested in him by that act, the power to withhold the lands from disposal pending the outcome of tests upon the structure. 51–235

151. Land designated by the Geological Survey, under the supervision of the Secretary of the Interior, as

within the known geological structure of a producing oil or gas field, is not subject to a prospecting permit under the provisions of section 13 of the act of February 25, 1920, nor to a lease under section 14 thereof, even though such designation be not made until after a claim to so prospect has been duly initiated. 47–582

152. An application for a prospecting permit under section 13 of the leasing act, once denied in connection with favorable action upon conflicting applications under section 19 of that act, will not be reinstated to the prejudice of the competing applicants, if the defeated applicant did not first seek his remedy under the original application by appeal or otherwise. 48–356

153. Where an applicant for an oil and gas prospecting permit under section 13 of the act of February 25, 1920, in good faith presents an application which does not conform to the requirements of the statute as to compactness, and the Land Department requires an election as to the land to be retained, the privilege to elect, if exercised within the specified time, is not defeated by an intervening application filed by another under that act. 48–555

154. The act of February 25, 1920, does not require the posting of notice on the land preliminary to the filing of an application for an oil and gas prospecting permit, and one who posts notice and applies for a permit under section 13 of the act after the filing of an application by another under that section does not acquire a preference right to a permit. 48–555

155. The preference right accorded by the act of May 14, 1880, as amended by the act of July 26, 1892, to a contestant who procures the cancellation of a homestead entry as the result of his contest, is not applicable with respect to an oil and gas prospecting permit under section 13 of the act of February 25, 1920. 48–580

156. Rights to an oil and gas prospecting permit do not attach prior to the filing of an application in the form and manner prescribed by the act of February 25, 1920, and the departmental regulations issued thereunder, and the mere posting of a notice of intention to apply for a permit is not sufficient to defeat the provision of section 13 of the act, which limits its operation to land that is "not within any known geological structure of a producing oil or gas field." 49–175

157. The preference right accorded by section 13 of the act of February 25, 1920, in the award of an oil and gas prospecting permit to one who has properly monumented and posted notice in accordance with the provisions of the act must be denied if the terms of the act with respect thereto are not strictly complied with. 49–418

158. The word "authorized," as used in section 13 of the act of February 25, 1920, is to be construed as clothing the Secretary of the Interior with discretionary authority in the granting of oil and gas permits under that section. 49–625

159. The Secretary of the Interior has discretionary authority under section 13 of the act of February 25, 1920, to deny an application for an oil and gas prospecting permit embracing lands within a reclamation withdrawal, which, though owned by the United States, have been dedicated to purposes authorized by law, if the permit may not be granted except at the risk of serious impairment or perhaps complete loss of their use for the purpose to which dedicated. 49–625

160. Neither the leasing act of February 25, 1920, the departmental regulations issued thereunder, nor the terms of leases granted pursuant thereto, confer upon or reserve to the Land Department, after the delivery and acceptance of an oil and gas lease, any jurisdiction to determine what disposition shall be made of proceeds derived from oil and gas development operations on leased lands

and remaining in the hands of lessees after the payment of the royalty due the United States. 49–634

161. Where an application for a permit under section 13 of the act of February 25, 1920, is filed in good faith for lands shown by the records of the local land office to be free from conflicting claims, such application constitutes a bar to the amendment of subsisting permit applications, although based upon location notices posted upon the land, if there was no apparent error in those applications when filed. 49–655

162. A location notice, posted as prescribed by section 13 of the act of February 25, 1920, has a segregative effect for a period of 30 days only, and when an application for a permit is filed the application becomes the notice to all applicants that the land described therein is adversely claimed and can not be amended after the expiration of the 30-day period to conform to the description posted, in the presence of a *bona fide* intervening claim. 49–655

163. Neither the act of February 25, 1920, nor the departmental regulations issued pursuant thereto make distinction between surveyed and unsurveyed lands as to preference rights initiated under section 13 of the act by the posting of location notices, except that greater particularity is required in the descriptions of lands of the latter class. 49–655

164. The rights of an applicant for an oil and gas prospecting permit under section 13 of the act of February 25, 1920, pass, on the death of the applicant, to the personal representatives in the same manner as does other personal property. 50–208

165. An oil and gas prospecting permit will be denied under section 13 of the act of February 25, 1920, for lands dedicated to some special public purpose, such as a bird reservation, if drilling operations will jeopardize or impair the use of the land for the special purpose to which it was dedicated. 50–308

166. An application for an oil and gas prospecting permit under section 13 of the act of February 25, 1920, is, in effect, a mere request that a license be granted and confers upon the applicant no interest in the lands or the mineral deposits therein. 50–339

167. The action of the Land Department in granting an oil and gas prospecting permit under section 13 of the act of February 25, 1920, is, in effect, an adjudication that the land is of a status and character subject to prospecting thereunder, and it can not thereafter deny a lease under section 14 of that act to the permittee where he has in good faith proceeded, in reliance on the permit, to discovery and production of oil and gas. 50–386

168. A departmental regulation limiting the maximum area over which prospecting of incontiguous tracts of public lands for oil and gas may be conducted under one permit to a township, that is, an area 6 miles square, is a liberal interpretation of what constitutes an area in a "reasonably compact form" within the meaning of section 13 of the leasing act, and will not be modified except in special cases. 50–353

169. The preference right to prospect for oil and gas accorded by section 13 of the act of February 25, 1920, upon fulfillment of the notice requirement of that section, was carried over into the leasing act from the provision of the placer mining laws which gave priorities to the one first locating mineral land on the ground and posting appropriate notice of the claim, and is equally applicable to both surveyed and unsurveyed land. 50–413

170. Section 13 of the act of February 25, 1920, is to be construed in connection with sections 14 and 17 of that act, and, when so construed, it is clear that the issuance of permits thereunder is contemplated only to encourage such prospecting as will bring into production a new field or to extend the known limits of a field already producing. 50–546

171. Noncontiguous areas of oil and gas lands, to be subject to a single permit under section 13 of the act of February 25, 1920, must be such as may be included in an area 6 miles square. 50–665

172. Where a single application for an oil and gas prospecting permit is for incontiguous tracts, the erection of a notice upon each tract with a description of the land is required to fulfill the provision of section 13 of the act of February 25, 1920, if the lands be surveyed, but, if unsurveyed, the corners of each tract must be monumented. 50–690

173. To be entitled to a preference right to an oil and gas prospecting permit under section 13 of the act of February 25, 1920, literal compliance with all the provisions of the governing regulations, which have all the force and effect of law, including payment of the filing fees, is necessary. 51–36

174. Because of delay on the part of a settler to make entry of public land, the intervening of a mere application for an oil and gas prospecting permit under section 13 of the act of February 25, 1920, does not, in the absence of notice thereof, deprive the entryman of any of his rights under his entry. 51–38

175. An application for a prospecting permit under section 13 of the act of February 25, 1920, is not an adverse right within the meaning of the law governing settlement claims. 51–38

176. The word "provided," as used in section 13 of the act of February 25, 1920, is to be construed as a conjunction, and when thus construed all preceding provisions in that section not inconsistent with the later provisions thereof are applicable in so far as they relate to permits issued both for lands in the United States and in Alaska. 51–177

177. A permittee under section 13 of the act of February 25, 1920, is entitled, subject to regulations by the Secretary of the Interior under the general authority conferred upon him by section 32 of that act, to use timber standing upon the land covered by his permit for use as fuel in drilling operations. 51–251

178. Under the discretionary authority conferred upon the Secretary of the Interior by the act of February 25, 1920, in granting prospecting permits under section 13 of that act, a permit to prospect lands embraced within an agricultural entry made without reservation of oil and gas contents will be denied when it appears, on report from the Geological Survey, that the lands are without prospective value for these minerals. 51–478

179. The act of January 11, 1922, enlarged, but did not supersede, the provision in section 13 of the act of February 25, 1920, relating to the granting of extensions of time for the performance of drilling operations upon lands embraced within oil and gas prospecting permits. 51–177

VII. Extension of Time

180. Instructions of January 16, 1922, relating to oil and gas permits under section 13, act of February 25, 1920; extension of time for beginning drilling. (Circular No. 801, revised.) 49–110

181. Instructions of January 12, 1923, oil and gas permits under section 13, act of February 25, 1920; extension of time for beginning drilling. (Circular No. 801, amended.) 49–403

182. Instructions of June 26, 1924, extension of time for beginning drilling operations under oil and gas permits; Circular No. 801, amended. (Circular No. 946.) 50–567

183. Instructions of November 11, 1925, extension of time for beginning drilling operations under oil and gas permits; Circular No. 946, supplemented. (Circular No. 101.) 51–278

184. Instructions of April 27, 1926, extensions of time for drilling under oil and gas permits; Circulars Nos.

946 and 1041, supplemented. (Circular No. 1063.) 51–450

185. Group development under an oil and gas prospecting permit issued pursuant to the act of February 25, 1920, is not recognized as performance of the conditions of the permit, but as such diligence in an effort to procure the performance necessary to warrant the extension of time authorized by the act of January 11, 1922. 50–348

186. The act of February 25, 1920, contains a positive direction that oil and gas deposits be disposed of only as provided therein, and is mandatory to that extent, but the act of January 11, 1922, vests the Secretary of the Interior with special discretionary powers with respect to the granting of extensions of time for the performance of the conditions in prospecting permits. 50–348

187. The department can not sanction the granting of extensions of prospecting permits under the act of January 11, 1922, where permittees have idly awaited development by others with the expectation, upon the proving of the structure, to then secure drilling, and, upon discovery, claim a reward which was primarily intended for those proving the structure. 50–546

188. A permittee who enters into a contract with a drilling contractor in terms which preclude him from enforcing drilling within the time prescribed in the permit will not be granted an extension of time within which to commence drilling on the plea that lack of diligence should be attributed to the contractor and not to the permittee. 50–610

189. A drilling contract made contingent upon the success of, or to follow, a test well to be drilled elsewhere on a structure, is not such a contribution to the test as to warrant an extension of time under the act of January 11, 1922. 50–610

190. The act of January 11, 1922, enlarged, but did not supersede, the provision in section 13 of the act of February 25, 1920, relating to the granting of extensions of time for the performance of drilling operations upon lands embraced within oil and gas prospecting permits. 51–177

191. Neither the leasing act of February 25, 1920, nor the extension act of January 11, 1922, authorizes the extension of the life of an oil and gas prospecting permit beyond five years, and contribution by a permittee toward the cost of a test well upon other land can not be accepted as a basis for the suspension, after the expiration of that period, of a permit upon which drilling had not been commenced. 51–274

VIII. Section 14 Leases

192. Instructions of September 23, 1926, oil and gas leases; reward for discovery; paragraph 8, Circular No. 672, modified. (Circular No. 1094.) 51–597

193. Instructions of October 1, 1926, applications for leases by oil and gas permittees under section 14 of the leasing act. (Circular No. 823, revised.) 51–600

194. The provisions of section 14 of the leasing act, which must be construed with reference to the granting of oil and gas prospecting permits under section 13 of that act, contemplate that the location of lands embraced within a permit shall be in general conformity with the system of public land surveys. 49–140

195. The term "shall be in compact form," as used in section 14 of the act of February 25, 1920, in connection with the granting of a 5 per cent royalty lease thereunder, does not require that the leased lands be contiguous in all cases, but contemplates that a permittee may, where incontiguous tracts have been included in a prospecting permit, select as a reward for discovery, the legal subdivision upon which the discovery well is located, and such remaining land, as near thereto as is possible, up to the prescribed amount, whether contiguous or noncontiguous. 50–562

196. The question as to whether valid discovery of mineral has been made is to be determined in each case from the facts disclosed in that case, and where there has been regular and continuous production of high gravity oil for two years upon which royalty has been paid, although averaging but one barrel per day, from a shallow well on land so near the edge of a structure that deeper drilling would not be justified, such constitutes discovery sufficient to authorize the issuance of a lease under section 14 of the act of February 25, 1920. 51–116

197. The term "lease," used in section 29 of the leasing act of February 25, 1920, includes prospecting permits issued under that act. 51–166

198. A permittee under the act of February 25, 1920, who applies for an oil and gas lease is entitled to the benefit of the 5 per cent royalty provision of the act from the date of the filing of the application for lease unless and until his application shall be rejected. 51–282

199. An oil and gas permittee may invoke the rule of approximation in order to conform his selection of the 5 per cent royalty area to legal subdivisions in fulfillment of the requirement of section 14 of the act of February 25, 1920, but, where that rule can not be applied, the selection of aliquot parts of regular subdivisions may be permitted. 51–310

200. A gas lease in which the lessee agrees to develop and maintain a minimum quantity of gas, and to utilize same or pay royalty thereon, is a lease on a minimum royalty basis and obligates absolutely the lessee to pay the minimum royalty, without deduction for gas used or sold for operating purposes. 51–313

201. Annual rentals accrue under a lease executed pursuant to section 19 of the act of February 25, 1920, from the date of the filing of the lease application, and failure to remain in actual possession of the premises thereafter will not excuse full payment thereof from that time in cases where the applicant could have occupied the land had he desired to do so. 51–508

IX. Section 19 Permits

202. Instructions of April 23, 1921, modifying instructions as to acreage under section 19 permits which may be acquired by transfer or assignment. 48–96

203. The purpose and intent of the provision of section 19 of the act of February 25, 1920, which specifies that "all permits or leases thereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear," is obviously to permit the land Department to deal with the holder or holders of the record mining title, and *a priori* the mere lessee of such claimant, not being himself in a position to surrender to the United States the mining title, is not entitled to a lease in his own name under said section. 48–210

204. An applicant for an oil and gas prospecting permit under section 19 of the act of February 25, 1920, who is unable to show sufficient fulfillment of the expenditure requirement of that section necessary to entitle him to a permit thereunder, can not be allowed to amend his application and take a permit under section 13 of the act in the presence of an adverse claim existing by reason of the pendency of an application previously filed by another under the latter section. 48–218

205. Expenditures incident to the examining, surveying, and staking of an oil or gas location, and the recording of notices thereof can not be accredited in making up the aggregate of $250 required to be expended by section 19 of the act of February 25, 1920, in order to entitle the claimant to a preference right to a prospecting permit. 48–218

206. It is not necessary that the expenditures relied upon by a placer

mining claimant as a basis for an oil and gas prospecting permit under section 19 of the leasing act, if otherwise sufficient to meet the requirements of that section, should have been made with the intention of securing a patent under the mining laws. 49–224

207. Expenditures relied upon as a basis for a permit under section 19 of the leasing act, made by a lessee pursuant to an agreement contained in an oil and gas lease of a group of placer claims, which provides unconditionally for the drilling of but one well, the drilling of other wells being contingent upon the production of oil in commercial quantities from the well first to be drilled, can be accredited only to the single claim upon which that well was proposed to be drilled, where no other expenditures were made with specific reference to any of the remaining claims. 49–225

208. An attempted oil placer location upon lands within an unrestricted homestead entry which remained intact at the time of the passage of the act of February 25, 1920, lacks the element of basic validity requisite as a condition precedent to the granting of an oil and gas prospecting permit under section 19 of that act and constitutes no bar to the allowance of a junior permit application in favor of the homesteader. 48–337

209. An assertion of prescriptive title can not be invoked under section 2332, Revised Statutes, to defeat the outstanding interest of record of a cotenant, by a claimant under an oil placer location with the view to obtaining an oil and gas prospecting permit under section 19 of the act of February 25, 1920, where a discovery of oil or gas has not been made. 48–526

210. Performance of annual assessment work by a locator of an oil placer claim in accordance with the provision relating thereto contained in section 2324, Revised Statutes, can not be invoked, in the absence of a discovery of oil or gas, to oust the interest of a colocator who has failed to contribute, by an applicant for an oil and gas prospecting permit based upon an assertion of preference right under section 19 of the act of February 25, 1920. 48–526

211. The right to an oil and gas prospecting permit conferred by section 19 of the act of February 25, 1920, is in the nature of a preference right or privilege which may be exercised, or waived, at the option of the occupant or claimant, and is, of necessity, waived if not asserted within the time and in the manner prescribed by the law and applicable regulations. 48–527

212. Section 19 of the act of February 25, 1920, presupposes that the occupant or claimant of an oil placer claim upon which a right to a prospecting permit is predicated has no interest in the land that can be otherwise recognized and completed under the terms of the mining laws. 48–527

213. As between two conflicting claimants for an oil and gas prospecting permit under section 19 of the act of February 25, 1920, both relying upon asserted placer locations for the same land on which the character of the work performed by each was substantially the same, a superior right to a permit will be recorded to the junior claimant upon a showing of exercise of due diligence, where the senior claimant, having failed to exercise due diligence in the prosecution of work looking to a discovery of oil or gas, forcibly prevented the junior claimant from proceeding actively with the performance of discovery and development work with a view to perfecting the location. 48–630

214. Section 19 of the act of February 25, 1920, does not contemplate that an applicant for a prospecting permit thereunder must have complied with the conditions imposed by the first proviso to section 2 of the act of June 25, 1910, but an oil placer location is to be deemed valid within

the purview of the former section if the claimant thereof had, prior to a petroleum withdrawal, outstanding at the date of the enactment of the leasing act, in good faith fulfilled all of the requirements under then existing laws necessary to valid locations except those relating to the prosecution of work leading to discovery. 49–224

X. Preference Right to Leases and Permits (Secs. 18, 19, 20)

215. Instructions of July 30, 1921, relative to conditions under which Carey Act entrymen are entitled to preference rights under section 20, act of February 25, 1920.—When election under act of July 17, 1914, is required. 48–164

216. Where a claimant, who is asserting rights under the placer mining laws to withdrawn oil and gas bearing lands, files concurrently an application for a preferential lease, together with a quit-claim deed, pursuant to the provisions of section 18 of the act of February 25, 1920, and a request for a patent, it will be held that the claimant elected to accept the benefits conferred by the leasing act. 48–303

217. Congress, when it incorporated in the act of February 25, 1920, the relief provision contained in section 18 thereof, authorizing the issuance of preferential leases to oil placer mining claimants for lands withdrawn September 27, 1909, upon fulfillment of the conditions specified therein, intended that such claimants should either pursue patents under the placer mining laws, or leases under that section, not both concurrently. 48–303

218. The granting of an oil and gas lease under section 18 of the act of February 25, 1920, is a matter wholly independent of any contract that may have been entered into pursuant to the act of August 25, 1914, between the Government and the lease applicant or his predecessor in interest with respect to the land, but controversies giving rise to such contracts, as well as suits, must be settled and adjusted in harmony with the provisions of that section. 48–313

219. Neither section 18 of the act of February 25, 1920, which provides that under certain stated conditions a claimant of oil and gas bearing lands may be granted a lease, nor any other provision of the leasing act, authorizes either expressly or by implication the collection of payment of royalty on oil and gas produced by the lease applicant from any land other than that in the relinquished area. 48–313

220. Upon the division of a tract of oil and gas bearing land as the result of the settlement of a controversy involving the question of title, whereunder the claimant receives a patent for a portion of the land and is granted the right to acquire a lease for the remainder under section 18 of the act of February 25, 1920, upon fulfillment of the conditions set forth in that section, the Government is entitled to receive payment of only an amount equal to one-eighth of the value of the oil or gas produced from the relinquished area, notwithstanding the fact that a contract to a different effect had previously been entered into with respect to the distribution of proceeds impounded under an operating agreement. 48–313

221. The oil leasing act of February 25, 1920, contains no necessary or even reasonable implication that a claim for relief under sections 18, 19, and 22 thereof is to be defeated by the refusal or failure of a coclaimant to join in an application for a permit or that one of several coclaimants can by waiver, relinquishment, or failure to assert his right within the prescribed time, do more than destroy his personal privilege or preference right to share the benefit granted by said sections; and provision to cover such contingency is contained in section 24½ of the regulations issued pursuant to said act. 48–527

222. The claim of an applicant for a lease under the relief provisions of section 19 of the act of February 25,

1920, who asserts in support thereof an inchoate right under the placer mining laws, but who during a period of several years prior to October 1, 1919, never having made a discovery of oil or gas, stood idly by and without protest permitted others to acquire apparent title, and deal with it as theirs, and as though he had no right, must be treated as an abandoned claim, not entitled to equitable consideration under that section. 49–235

223. An entryman whose entry has been allowed under the enlarged homestead act, upon an application, accompanied by the required showing and payment, filed previously to the inclusion by Executive order of the land within a petroleum reserve, is entitled to the exercise of the preference right privilege to an oil and gas prospecting permit accorded by section 20 of the act of February 25, 1920, notwithstanding that the withdrawal was made prior to the allowance of the entry, and that the entry was allowed subject to the reservations of the act of July 27, 1914. 48–350

224. Section 18 of the leasing act was only intended to afford relief to a class of claimants whose claims were initiated under preexisting laws, such relief to be personal, not to enlarge the rights of persons who had spent nothing until after the leasing act had been enacted and the original claimants had been awarded the leases. 50–620

225. A homestead entryman, whose entry was made subsequently to the enactment of the act of February 25, 1920, does not acquire thereby a preference right to a prospecting permit under section 20 of that act. 48–356

226. The right of an agricultural entryman to be preferred in the award of an oil and gas prospecting permit granted by section 20 of the leasing act of February 25, 1920, is not applicable to homestead entries initiated after the passage of that act. 57–622

227. Section 18 of the act of February 25, 1920, contemplates and requires that a lease thereunder shall issue to the person, persons, or corporation possessing and surrendering to the United States the mining title; those claiming under or through such claimant or claimants being protected by the provision therein that "all leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear." 47–585

228. The act of February 25, 1920, does not contemplate that an agricultural entry made after its approval shall constitute the basis for a preference right to a prospecting permit under section 20 thereof. 47–588

229. Section 20 of the act of February 25, 1920, did not modify or limit the right of assignment of a desert-land entry authorized by preexisting law or deprive an assignee of any rights or privileges conferred upon the original entryman, and the recognized assignee of one who made a desert-land entry of lands not withdrawn or classified as mineral at the time of entry is entitled to a preference right to prospect for oil and gas, notwithstanding that the assignment was made subsequent to January 1, 1918. 48–237

230. Where an indemnity school selection was made for lands not withdrawn or classified as mineral when selected, but which were afterwards approved with a reservation of the oil deposits to the United States, a transferee is entitled to a preference permit under section 20 of the act of February 25, 1920, if the State had completed the selection and made the transfer prior to January 1, 1918, notwithstanding that the approval was subsequent to that date. 49–177

231. The privilege of being preferred in the award of an oil and gas prospecting permit accorded by section 20 of the act of February 25, 1920, in favor of an entryman of lands *bona fide* entered as agricultural, and not withdrawn or classified as mineral at the time of entry, does not inure to

the benefit of one who had only a settlement claim for surveyed public land at the date of the withdrawal. 49–204

232. The preference right granted by section 20 of the act of February 25, 1920, to one who had *bona fide* made an agricultural entry of lands not withdrawn or classified as mineral, to prospect for oil and gas, attaches upon the filing of a completed application for a permit, accompanied by the required fees, and such right is not thereafter forfeited by the subsequent relinquishment of the basic entry prior to the actual issuance of the permit. 49–248

233. The rule that an application to enter public land subject to entry, when accompanied by the requisite showing and fees, is equivalent to entry, applies with equal force to proper applications filed by qualified persons for permits to prospect for oil and gas on lands subject to exploration under section 20 of the act of February 25, 1920. 49–249

234. A State, not being included among the parties enumerated in the enabling clause of the act of February 25, 1920, is disqualified to take a permit under any section of the act; consequently it is not entitled to the exercise of the preference right to an oil and gas permit accorded by section 20 of that act, inasmuch as that section contemplated that the right should be exercised only by one qualified to take a permit. 49–564

235. One who makes a surface entry under the act of July 17, 1914, for lands embraced at time of entry within a petroleum withdrawal is not entitled to a preference right to an oil and gas prospecting permit under section 20 of the act of February 25, 1920. 49–610

236. An alien who has declared his intention of becoming a citizen of the United States, being eligible to make a homestead entry, was not excepted by section 20 of the act of February 25, 1920, from the class of entrymen to which the award of the preference right to an oil and gas prospecting permit was accorded by that section, and the Secretary of the Interior may, in pursuance of the general power conferred upon him by section 32 of that act, hold the preference-right privilege of an alien entryman in abeyance to await action upon his final citizenship papers. 49–613

237. The preferment in the award of an oil and gas prospecting permit accorded to a homestead entryman by section 20 of the act of February 25, 1920, over a prior applicant for a permit under section 13 of that act, is not affected by a pending contest against the entry where there is no charge that the entry was made with a view to acquiring the mineral deposits or in bad faith for any other purpose. 50–134

238. A settlement claim made under the homestead laws prior to the inclusion of the land within a petroleum withdrawal, which did not ripen into an entry until after the creation of the withdrawal, affords the entryman no basis for a preference right to an oil and gas prospecting permit under section 20 of the act of February 25, 1920. 50–208

239. Nonaction on the part of one to whom is accorded a preference right to an oil and gas prospecting permit by section 20 of the act of February 25, 1920, after service of notice upon him by a permit applicant in accordance with a departmental regulation issued pursuant to that act, creates a constructive waiver of the preference right which estops him from ever thereafter asserting the right, notwithstanding that the application in connection with which the notice was served is disallowed. 50–406

240. A regulation which requires that a surface entryman exercise a preference right to a prospecting permit under section 20 of the leasing act, upon service of notice by one having an adverse application pending, or to show that the adverse claimant is

disqualified to hold a permit, is a regulation necessary and proper to achieve the purposes of the act, and is authorized by section 32 thereof. 50–409

241. An entryman who initiates a homestead entry under the conditions prescribed by section 20 of the act of February 25, 1920, is entitled to a preference in the award of a permit to prospect for oil and gas on the entered land, if the entry was intact at the time that the permit application was presented, although statutory expiration notice for submission of final proof had issued prior thereto, and the entry was canceled for default before the permit was granted. 51–413

242. Section 20 of the leasing act is, in its nature, a relief measure, designed to recognize the equities of entrymen who made agricultural entries in good faith and prior to the classification of the lands as valuable for oil and gas, and should be liberally construed. 51–413

243. A homestead entryman is entitled to a lease of the oil and gas contents in the land embraced in his entry, where those lands have been classified as within the known structure of a producing oil and gas field, if, except for such classification, he would have been entitled to a preference right to a prospecting permit under section 20 of the leasing act. 51–413

244. Congress intended that the only effect that a classification of land as within the known geologic structure of a producing oil and gas field should have upon the rights of an entryman otherwise entitled to a preference right permit under section 20 of the leasing act was that, instead of being awarded a permit and subsequently, as a reward for discovery, the reduced royalty authorized by section 14 of the act he, like all others, should receive only a lease at a higher royalty rate. 51–413

XI. Assignments

245. The assignment of an oil and gas prospecting permit does not create separate and distinct obligations to the United States, but the assignee merely secures as to the land assigned the same right to prospect thereon which the permittee had, and drilling by either the permittee or the assignee is development for the entire permit. 50–510

246. An assignment with departmental approval of substantial interests in several oil and gas prospecting permits to a driller as consideration for drilling a test well made in conjunction with a contract for the immediate development of lands covered by one of the permits, constitutes an actual contribution to the cost of the test and entitles the permittees to extensions of time to begin drilling upon the lands covered by the other permits; but the duty devolves upon the permittees to enforce fulfillment of the contract, and lack of diligence in that respect will be a bar to further extension. 50–652

247. The assignee of a lease, in whole or in part, and the assignee of a prospecting permit in its entirety, assume obligations to the United States to the same extent as though the lease or permit had issued to the assignee in the first instance. 50–652

248. Where a prospecting permit is only partially assigned, the permit will still be regarded as a unit and the permittee and assignee as associates with indirect interests, and as such entitled to interests in more than one permit upon the geologic structure, provided that the limitation as to acreage contained in section 27 of the leasing act is not exceeded; upon discovery both will be entitled to leases for their proportionate parts of the entire area, and at a royalty of 5 per cent upon an area equal to one-fourth of the area described in the permit as issued. 50–653

249. Where undivided interests in a prospecting permit or lease are assigned, the permit or lease remains a unit after assignment, and the permittee or lessee and the assignee become associates, and as such may be interested in more than one permit or lease upon a geologic structure, provided that the limitation as to acreage is not exceeded. 50–653

250. Any right or interest in an oil and gas prospecting permit given to an operator constitutes an assignment to the extent of the right or interest so conferred. 51–242

251. An agreement under which a permittee remains in sole control of the premises and responsible to the Government under the permit, and the operator is merely his agent, does not constitute the latter an assignee, regardless of whether reimbursement of the operator for his expenditures is to be in money or in oil produced from the land. 51–242

252. Where the effect of an arrangement under an operator's agreement in fact transfers the obligation of the permit or lease, and control thereunder, to the operator, so as to amount to an assignment thereof, the interest of the operator must be regarded as a direct holding under the act of February 25, 1920. 51–308

253. An oil and gas prospecting permit, after its issuance, remains a unit, and where parts of the area included therein have been assigned, with departmental approval, an assignee of one of those parts is not chargeable with royalty on oil or gas produced on his portion and sold to the holder of another portion of the permit area for use for production purposes thereon. 51–583

254. Where a portion of an oil and gas lease has been assigned, the assignee in effect acquires a separate lease, and oil or gas produced upon one portion can not be sold to the holder of another portion without payment of royalty. 51–583

255. The Land Department has jurisdiction to inquire into and determine whether or not an assignment of an oil and gas prospecting permit has been completed according to the agreement between the parties, and to refuse ratification of the assignment when it is proven that the assignee has failed fully to comply with the conditions under which the assignment was to be effective. 51–645

XII. Section 24½

256. Instructions of June 18, 1926, modifying prior instructions under section 27 of the leasing act. (Circular No. 1073.) 51–475

257. Section 27 of the leasing act was designed to prevent monopolies of geologic structures and excessive holdings within any one State by any person, association, or corporation. 50–620

258. The provision in section 27 of the leasing act that nothing therein should be construed to limit section 18 thereof, contemplated that the limitation in said section 27 as to the number of leases that might be acquired directly to three leases in a State should not prevent a qualified claimant under section 18 from acquiring a larger number of leases so long as such number does not exceed in the aggregate an area of 3,200 acres. 50–620

259. The proviso to section 27 of the leasing act has reference solely to limitations upon qualified claimants under section 18 of that act and not to their assignees. 50–620

260. The restrictions of section 27 of the act of February 25, 1920, as to the number of leases or permits that may be held by one person upon a geological structure and to the limit of acreage that may be acquired in leases and permits, while not applicable to persons entitled to relief under section 19 of that act, nevertheless apply to transferees or assignees of prospecting permits or leases issued under the latter section. 50–639

261. Section 27 of the act of February 25, 1920, does not contain any express limitation preventing a corporation, if authorized by its charter, from becoming interested, as a member of an association, in more than one lease on a geologic structure or more than three leases in a State, provided that the interests, both direct and indirect, do not exceed 2,560 and 7,680 acres, respectively. 50-652

XIII. Section 27

262. There is no inhibition against the acquisition of direct and indirect interests by one person in several oil and gas prospecting permits, provided that the maximum acreage of 2,560 acres on a geologic structure, or of 7,680 acres in a State, is not exceeded. 51-135

263. The limitations of section 27 of the act of February 25, 1920, while making no specific reference to prospecting permits, are nevertheless applicable to holdings under permits as well as to those under leases except as to permits partially assigned, in which event the assignee is regarded as a member of an association and subject only to the acreage limitations upon indirect holdings. 51-135

264. The restrictions of section 27 of the act of February 25, 1920, relate to the substance and not the form of assignments and contracts, and an operating agreement entered into between a permittee and an operator must be construed with reference to its legal effect rather than the purpose of the parties. 51-241

265. A corporation may become a member of an association and thus acquire an indirect interest in a permit subject only to the acreage limitation of section 27 of the act of February 25, 1920; but the mere conveyance to a corporation of an individual interest in a permit will not of itself accomplish that result. 51-242

266. An operating agreement might fall short of being an assignment in a technical sense and yet confer upon the operator such an indirect interest as would affect his qualifications under section 27 of the leasing act. 51-242

267. Neither a holding corporation having no leasehold interest under the act of February 25, 1920, other than through ownership of stock in a subsidiary corporation, nor such subsidiary, is disqualified from acquiring and holding an indirect interest in two leases on the structure of a producing oil or gas field by reason of holding two direct leases under section 14 of that act in the same State, but on other structures, if the acreage limitation of section 27 of the act is not exceeded. 51-272

268. An application for a permit or lease by two or more persons jointly under the act of February 25, 1920, is *prima facie* an application by an "association" within the meaning of section 27 of that act. 51-299

269. Section 27 of the act of February 25, 1920, does not preclude an individual or an association from holding interests in more than one permit or lease on a structure, or three in a State, as a member of an association or of several associations, provided that the interests, both direct and indirect, do not exceed the acreage limitation. 51-299

270. The application of the limitations of section 27 of the act of February 25, 1920, to interests in an oil and gas permit or lease acquired by an operator under an operating agreement is a question of fact, to be ascertained from the evidence in each case. 51-308

XIV. Oil Shale (secs. 21 and 27)

271. Oil-shale regulations of March 11, 1920, act of February 25, 1920. (Circular No. 671, reprint.) 47-424

272. Oil shale having been recognized by both the department and Congress as a mineral deposit and a source of petroleum, and having been demonstrated elsewhere to be a material of economic importance, lands

valuable on account thereof must be held to be subject to valid location and appropriation under the placer-mining laws to the same extent and subject to the same provisions and conditions as if valuable on account of oil or gas. 47–548

273. The limitation contained in section 21 of the act of February 5, 1920, relating to the leasing of deposits of oil shale belonging to the United States, prevents a lessee thereunder from taking and holding directly more than one lease, irrespective of whether the leased area is in one State or another. 48–635

274. The limitations contained in section 27 of the act of February 25, 1920, in respect to any kind of mineral leased under that act, are applicable to an oil shale lease, and consequently no person or corporation can take and hold, either directly or indirectly, any interest or interests in oil shale deposits in an area or areas exceeding in the aggregate the equivalent of 5,120 acres. 48–635

275. Lands containing oil shale are to be classified as oil and gas lands for purposes of the operation of the placer mining laws. 51–229

276. In determining whether the physical exposure of an oil shale deposit within the limits of an asserted oil shale placer-mining location is sufficient to constitute an adequate discovery of mineral to render the location valid, the department will apply to such particular deposit the rule as to thickness and oil content adopted by the Geological Survey in its regulations of April 3, 1916, for the classification of lands with respect to their oil shale character. 51–424

277. A recital in a showing filed in support of an application for patent to an oil shale placer-mining claim to the effect merely that there has been exposed within the limits of the claim a deposit of oil shale containing petroleum in commercial quantities can not be accepted as fulfilling the requirements of the rule adopted by the Geological Survey April 3, 1916. 51–425

XV. Easements (Sec. 29)

278. A State selection for lands embraced within an oil and gas prospecting permit can not be allowed prior to the cancellation of the permit and notation of its cancellation upon the records of the local land office, except upon the consent of the selector to take subject to the provisions and reservations of the act of July 17, 1914, and to the right of the permittee to the use of the surface in accordance with the provisions of section 29 of the act of February 25, 1920. 49–580

279. The only disposition that may be made of the surface pursuant to section 29 of the act of February 25, 1920, of lands for which a prospecting permit or lease has been awarded, is such disposal, under existing nonmineral land laws, as will preserve to the permittee or lessee free use of the surface in any manner necessary to meet the fullest compliance with the terms of the permit or lease. 50–369

280. The free use of the surface accorded by section 29 of the act of February 25, 1920, to a permittee or lessee, is included in the right to prospect for, mine and remove the mineral deposits reserved by the act of July 17, 1914, in lands subsequently entered pursuant to the latter act, and the waiver of compensation required of such entryman is not an alteration or enlargement of the terms of the act of 1914, inasmuch as the only provision in that act requiring reimbursement to an entryman for damage to his crops and improvements, is that contained in section 2 thereof, which relates to nonmineral claims antedating the initiation of mineral rights. 50–369

281. The practice of requiring an express waiver of claim to compensation for damage to crops and improvements by one who has been

permitted to make a surface entry pursuant to section 29 of the act of February 25, 1920, is merely an administrative means of fully informing the entryman as to the extent of his rights under that section. 50–369

282. The authority conferred upon the Secretary of the Interior by section 29 of the act of February 25, 1920, to permit the allowance of surface entries of lands included in prospecting permits and leases is discretionary with that officer. 50–383

283. Section 29 of the act of February 25, 1920, provides that only such surface as is not necessary for the use of a permittee or lessee may be disposed of, and, where a stock-raising homestead entry has been allowed pursuant to that section, the right vested in the permittee or lessee to use so much of the surface as may be necessary to conduct operations under the permit or lease is paramount to the right of the entryman to use such surface. 50–383

284. Section 29 of the act of February 25, 1920, modifies that portion of section 9 of the stock-raising homestead act which requires compensation for damage to the crops and improvements of the entryman resultant from the prospecting for the reserved mineral deposits, as to stock-raising homestead entries allowed pursuant to the former section. 50–383

285. Where an oil and gas prospecting permit has been issued prior to the initiation of a claim under the nonmineral land laws, an entry may be allowed only as to the surface, and subject to the prior right of the permittee to the use thereof as prescribed in section 29 of the leasing act, and the permittee should be afforded an opportunity to show cause why a surface entry should not be allowed. 50–524

286. The rights reserved by section 29 of the act of February 25, 1920, in lands under permit or lease are limited to disposals of the surface; that is, to nonmineral entries authorized by the acts of July 17, 1914, and December 29, 1916. 50–640

287. Under the discretionary power given the Secretary of the Interior by section 29 of the act of February 25, 1920, to dispose of so much of the surface of lands covered by permits and leases issued under that act as is not needed for the operations of the permittees or lessees, that official may authorize the cutting of timber therefrom by others pursuant to the acts of June 3, 1878, and March 3, 1891, if it is not needed for compliance with the leasing act. 51–252

288. The discretionary authority of the Secretary of the Interior to allow surface homestead entries upon lands covered by an oil and gas prospecting permit is expressly recognized in section 29 of the act of February 25, 1920, such allowance being subject, however, to the rights of the permittee to use so much of the surface of the land as is necessary in extracting and removing the mineral deposits without compensation to the nonmineral entryman. 48–623

XVI. Forfeiture (Sec. 31)

289. The provision contained in section 31 of the act of February 25, 1920, to the effect that an oil and gas lease may provide for the resort to appropriate methods for the settlement of disputes or for remedies for breach of specific conditions thereof, has particular reference to issues arising between the lessor and the lessee, but disputed questions relating to the disposition of proceeds accruing from drilling operations and remaining after the payment of royalties to the United States, come exclusively within the jurisdiction of the courts. 49–634

XVII. Oklahoma—Act of March 4, 1923

290. Instructions of March 7, 1923, oil and gas permits and leases on lands in Oklahoma south of the medial line of Red River; act of March 4, 1923. (Circular No. 876.) 49–467

291. The status of the oil and gas bearing lands south of the medial line of Red River in Oklahoma, being *sub judice*, the act of February 25, 1920, does not of its own force apply to that area, and inasmuch as Congress has enacted special legislation relating thereto contained in the act of March 4, 1923, the provisions of the former act become applicable upon the termination of that status only as prescribed by the latter act. 49–578

292. The act of March 4, 1923, expressly withheld the authority of the Secretary of the Interior to dispose of the oil and gas contents in the lands south of the medial line of Red River in Oklahoma until their *sub judice* status should be terminated and, until a date thereafter fixed by that official as prescribed by the act, an application for a prospecting permit filed by one not basing his claim upon equities recognized by the act must be denied. 49–578

293. The act of March 4, 1923, providing for the disposition of oil and gas deposits in lands of the United States south of the medial line of Red River in Oklahoma did not contemplate the recognition of any equities asserted under the leasing act of February 25, 1920, but only those persons who were claiming and possessing lands in that area, in good faith, under color of some legal right, and had made *bona fide* expenditures in development of the lands for oil and gas with reasonable diligence prior to February 25, 1920, are entitled to equitable consideration. 49–669

294. The allowance of an application for any interest in public lands is, as a rule, controlled by the status of the land at the time of the allowance, rather than at the date of the application, and where, at the time action upon an application for a permit to prospect for oil and gas in the bed of Red River, Oklahoma, was taken, the lands were *sub judice*, rejection of the application was proper. 50–534

XVIII. Regulations (Sec. 32)

295. Included in the general power conferred upon the Secretary of the Interior by section 32 of the act of February 25, 1920, to make regulations and to do all things necessary to accomplish the purposes of the leasing act, is the discretionary authority to prescribe conditions with respect to the exercise of the preference right to a permit or lease accorded by that act. 50–405

XIX. Section 37

296. The term "valid claims," as used in section 37 of the act of February 25, 1920, relates to unperfected claims to mineral lands and does not contemplate a completed grant of nonmineral lands to a State in aid of its common schools. 50–231

297. The fact that one claiming oil and gas land under a placer location gave financial assistance to another who drilled a test well and discovered oil upon other land in the locality, does not alone constitute such diligent prospecting by the former as to bring the land in his claim within the exception clause of section 37 of the act of February 25, 1920. 50–348

298. The exception clause of section 37 of the act of February 25, 1920, did not confer upon a claimant of a group of placer claims of oil and gas lands, upon which no discovery of mineral had been made, a right to retain them unless he had been in actual continuous possession of each claim and in diligent prosecution of prospecting thereupon up to the time of the passage of that act. 50–348

OKLAHOMA LANDS

See INDIAN LANDS, 44–86; OIL, GAS, ETC., LANDS, XVII; SCHOOL LANDS, 44–335; SURVEY, 50–216; TOWN SITES, 50–189.

1. Instructions of June 8, 1912, under act of April 27, 1912, extending time for payment on pasture lands. 41–80

2. Instructions of November 3, 1913, governing sale of Kiowa, Comanche, Apache, and Wichita lands. 42–604

3. Lands ceded to the United States by the Comanche, Kiowa, and Apache Tribes of Indians, and by the act of June 6, 1900, made subject to disposal under the general provisions of the homestead, town-site, and mining laws, are not subject to disposal under the timber and stone act. 41–132

4. Lands in the former Fort Sill wood reserve, which were by Executive proclamation of September 19, 1906, "opened to settlement and disposition under the provisions of the act of June 5, 1906," are not subject to entry under the general provisions of the homestead law. 41–263

5. Sections 13, 16, 33, and 36 in the so-called pasture and wood reserves are subject to disposition for the benefit of the Indians under the provisions of the act of Congress of March 3, 1911, and did not pass to the State of Oklahoma under its school grant, which must be satisfied, so far as these lands are concerned, under the indemnity provisions of the act of June 6, 1900. 41–433

6. The extension charge of 5 per cent authorized by the acts of March 11, 1908, and February 18, 1909, for extension for one year of payments on purchases of Oklahoma pasture lands under the act of June 28, 1906, is in lieu of interest for the year covered by the extension; and there is no authority for also charging interest during that period or for considering such extension charge as interest. 41–267

7. Any deficiency in payments on account of interest on deferred payments, due at the date of the act of April 27, 1912, is subject to division and extension under the provisions of that act. 41–268

8. Extension charges under the acts of March 11, 1908, and February 18, 1909, should be computed on the aggregate amount of the deferred payment and the interest thereon, and not on the deferred payment alone. 41–268

9. Any deficiency in extension payments made under the acts of March 11, 1908, and February 18, 1909, is a debt due and is not subject to extension, nor is interest chargeable thereon; and payment thereof must be made within 30 days from notice, on penalty of cancellation of the entry. 41–268

10. Payment of the 5 per cent extension charge under the acts of March 11, 1908, and February 18, 1909, on an installment of the purchase price of Oklahoma pasture lands, operates to extend only the particular installment upon which such charge is paid, and does not operate to extend any other payments not yet due and upon which no extension charge has been computed or paid. 41–608

11. Installments not paid and not extended under said acts continue after maturity, and extended installments continue after the year of extension, and prior to March 26, 1910, to draw interest at the rate of 6 per cent per annum fixed in the original purchase act of June 28, 1906, up to the date of the act of March 26, 1910, and thereafter at the rate of 5 per cent per annum fixed by the latter act. 41–608

12. Installments falling due originally, or as extended under the acts of March 11, 1908, and February 18, 1909, after March 26, 1910, draw interest at the rate of 5 per cent per annum from the date they fall due until they again become due as extended by the act of March 26, 1910. 41–608

13. Installments falling due as extended by the act of March 26, 1910, together with the interest thereon, are, under the act of April 27, 1912, to be subdivided into two parts each, at the dates they severally become due, one of such parts falling due one year from the date of the first subdivision and the remainder successively one each year thereafter until all are paid,

with interest thereon at the rate of 4 per cent per annum. 41–608

14. Application of the extension act of March 26, 1910, to deferred payments on Oklahoma wood reserve lands maturing prior to date of that act, under purchases made under act of June 5, 1906, distinguished from the application of the former act to such payments maturing prior to date of that act under purchases made under the act of June 28, 1906, as held in the Albright case. 42–476

15. The extension act of April 27, 1912, construed to apply alike to deferred payments under purchases made under act of June 5, 1906, and to deferred payments under purchases made under act of June 28, 1906, as held in the Albright case. 42–476

16. Homestead entries of Oklahoma pasture lands under the act of June 5, 1906, are by the terms of the act of August 1, 1914, excepted from cancellation for any cause except fraud, and are not therefore subject to contest on the ground of failure to establish residence, make improvements, or otherwise to comply with the requirements of the homestead law. 44–508

17. Only such laws as were expressly extended to public lands in Oklahoma are applicable to their disposition. 51–89

OMAHA INDIAN RESERVATION

See INDIAN LANDS, 48–60, 221, 222.

OREGON, STATE OF

See LACHES, 50–420; NATIONAL FORESTS, 49–488; SWAMP LANDS, 44–123.

1. By the weight of authority in the United States, one who signs and acknowledges a deed, though his name be omitted from the body of the instrument, makes the deed his own, and becomes bound in the premises conveyed; but even if that rule did not prevail in the State of Oregon, any defect resulting from such omission is cured by statute. 49–187

OREGON & CALIFORNIA RAILROAD LANDS

See MINING CLAIM, 50–656.

1. Regulations—Exchange of lands formerly within grant to Oregon & California Railroad. 46–424

2. See instructions, sale of timber on isolated Oregon & California Railroad tracts. 46–447

3. Instructions of April 19, 1919; use of timber on unentered tracts of class 3, Oregon & California Railroad grant lands. 47–123

4. Instructions of June 22, 1920, as to sale of timber and preference rights of settlers on lands withdrawn for power sites. (Circular No. 705.) 47–411

5. Instructions of July 7, 1920, as to sale of isolated tracts. (Circular No. 709.) 47–418

6. Regulations of May 2, 1923, restoration of lands in the former Oregon and California and Coos Bay Wagon Road grants. (Circular No. 892.) 49–566

7. Instructions of April 14, 1924, Oregon and California Railroad and Coos Bay Wagon Road grant lands; sale of timber. (Circular No. 928.) 50–376

8. Regulations of December 10, 1926, restoration to entry of lands within the former Oregon and California Railroad and Coos Bay Wagon Road grants. (Circular No. 892, revised.) 51–631

9. Lands within the forfeited grant to the Oregon & California Railroad Co., that have been classified as "power-site lands" under the authority conferred by section 2 of the act of June 9, 1916, and included within a power-site reserve by Executive order issued pursuant to the act of June 25, 1910, as amended by the act of August 24, 1912, are open to exploration, discovery, and purchase under the United States mining laws only so far as those laws apply to metalliferous minerals, and are not, therefore, subject to location of a

claim based upon discovery of deposits of fire clay or kaolin. 48–429

10. An attempted location of a mining claim for lands within the forfeited grant to the Oregon & California Railroad Co., prior to their classification, but which were later classified as "power-site lands" under the authority conferred by section 2 of the act of June 9, 1916, is void *ab initio* and no rights are acquired thereby which prevent a subsequent withdrawal of the lands for water-power purposes. 48–431

PAPAGO INDIAN RESERVATION

See MINERAL LAND, 45–537, 539, 540.

PARKS

See NATIONAL PARKS.

1. Regulations under act of August 22, 1912, making a grant for park purposes to Canon City and Boulder, Colo. 41–290

PATENT

See COAL LANDS, 49–354; 51–436, 437, 477; CONFIRMATION, 46–479, 496; HOMESTEAD, 48–18, 281, 564; 49–607, 659, 660, 671; INDIAN LANDS, II; JURISDICTION; MINING CLAIM, 44–173; 45–212, 330, 501; 47–169; MORTGAGE, 48–582, 637; OIL, GAS, ETC., LANDS, 48–126, 155, 243, 303; RAILROAD GRANT, VI; RES JUDICATA, 49–253; REPAYMENT, 46–116, 251; 48–291; RESTORATION, 46–55; RIGHT OF WAY, 44–6, 359, 412, 511; 45–460; 46–407, 429; SCHOOL LANDS, 48–384; 49–436.

1. Circular of June 3, 1914, concerning supplemental patent for coal deposits under act of April 14, 1914. 43–271

2. Instructions of November 20, 1914, under act of August 25, 1914, authorizing agreements with applicants for patents for oil lands in withdrawn areas. 43–459

3. Regulations of March 3, 1915, concerning notation of rights of way on the face of patents. 44–6

4. Instructions of July 5, 1924, State indemnity selections; form of patent, act of April 14, 1914. 50–572

5. Circular of February 2, 1916, governing issuance of perfect patents in cases where the records of such patents are defective. 44–546

6. The transferee of one to whom a patent had been issued describing a different tract of land than the one actually entered, selected, or located, is entitled, upon the execution of a deed reconveying to the Government the land erroneously patented, to a new patent in his own name for the land intended to be conveyed. 51–281

7. Where amendment of a homestead entry which was transferred after the issuance of final certificate was allowed upon request of the transferee because of error in the description of the land, patent will be issued in his name, as transferee. 51–335

8. Where a patent, erroneously issued to a railway company for a tract of land excepted from its grant by a valid settlement existing at the date of definite location, is by a court of competent jurisdiction declared a nullity, and such judgment becomes final, the railway company and all persons claiming under it are thereby concluded and estopped to assert title under the patent, and the Land Department may accept the judgment of the court and dispose of the land as public land of the United States. 41–140

9. The verification of an application for patent to a mining claim by an attorney in fact for the claimant, at a time when the claimant himself is both resident and physically within the land district, is unauthorized, and entry allowed upon such application is invalid and can not be submitted to the Board of Equitable Adjudication. 41–614

10. A valid entry of record, asserted by the entryman or his statutory successor in interest, duly qualified, is the essential basis for a homestead patent; and supposed equities growing out of mistaken or ill-considered decisions of the Land Department will

not warrant the issuance of patent in the absence of proper legal foundation. 42–64

11. The reservation of rights of way for canals and ditches required by the act of August 30, 1890, to be inserted in patents for public lands west of the one hundredth meridian need not be inserted in patents issued for lands granted to railroad companies to which the grant or right of the company attached prior to the date of said act; but should be inserted in patents for lands covered by indemnity selections made by railroad companies, and in selections made by the Northern Pacific Railway Co. under the provisions of the act of July 1, 1898, in all cases where such indemnity or other selections are approved subsequent to August 30, 1890. 42–396

12. There being no statutory provision requiring final certificates and patents issued upon homestead entries of lands over which pass rights of way acquired under the act of March 3, 1891, to contain a notation of exception thereof, and such notation not being necessary to the protection or preservation of such rights of way, the Land Department declined to include such notation in the final certificates and patents. 45–460

13. Where the patent issued upon a railroad indemnity selection erroneously includes a tract not embraced in that selection, but embraced in another indemnity selection by the same company, then pending but subsequently rejected, the patent as to that tract is voidable and not void, and suit to vacate and annul the patent as to said tract must be brought within the period fixed by the act of March 2, 1896. 45–166

14. A patent issued by the Land Department for public land of the United States over which it has jurisdiction, and which is not reserved or withdrawn for any purpose but is subject to disposition, passes the legal title to the land and divests the Land Department of jurisdiction, notwithstanding the patent may have been erroneously issued. 43–208

15. Where patent was inadvertently issued for lands involved in proceedings before the Land Department, its jurisdiction over the lands thus patented is thereby lost, and further proceedings for the purpose of making inquiry into the character of the lands will not be entertained on request of the patentee while the patent remains outstanding. 51–403

16. The act of March 2, 1855, is mandatory and does not leave any discretion in an administrative officer to deny a patent to a purchaser or locator of public lands, claimed by a State as swamp, who had made entry therefor prior to the issuance of a patent to the State, notwithstanding the issuance of a patent under the swamp-land grant. 51–445

17. There is no provision of law whereby the vendee of a completed homestead entry may be substituted in the patent to be issued thereon as the patentee, but patent in such case should issue in the name of the entryman. 44–139

18. Except in cases governed by section 2292, Revised Statutes, the department does not ordinarily undertake to determine who are the heirs of a public-land claimant, but patents are issued to the heirs generally, leaving to the courts to determine who under the law is entitled to the property. 51–244

19. Inasmuch as the provisions of the act of January 27, 1922, extend to the heirs or assigns of an entryman, the department is charged with the duty of ascertaining who are the heirs entitled to its benefits where the application for change of entry thereunder is made by heirs, and the patent should be issued to the heirs by name. 51–244

20. Where as the result of a suit by the United States to vacate and annul a patent issued under the coal land laws the lands in question are reconveyed to the United Staes in

accordance with a compromise agreement entered into by the parties to the suit, such lands do not become subject to filing or entry until the reconveyance thereof has been duly noted upon the records of the local office. 44–222

21. Section 9 of the regulations of March 20, 1915, under the act of July 17, 1914, providing for agricultural entries of lands withdrawn, classified, or reported as valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, amended to require that nonmineral entrymen of lands subsequently so withdrawn, classified, or reported, shall be notified of their right to apply for restricted patent therefor under section 3 of said act, and that upon failure to file application for patent within 30 days or to apply for classification of the land as nonmineral, the entry will be canceled. 45–77

22. Plats and field notes referred to in patents may be resorted to for the purpose of determining the limits of the areas that passed under the patents. 45–330

23. Where entry has been made for a group of mining claims, patent can not issue thereon for individual claims noncontiguous to each other, where there has been no discovery upon the intervening claims upon which they depend for their contiguity; but the entry may be permitted to stand and patent issued for the particular claim upon which the notice and plat were actually posted, provided a valid discovery and sufficient improvements were made thereon. 45–501

24. The legal effect of cancellation of a patent to public land by final decree of a proper tribunal is to revest title in the Government and restore the land to the public domain; but such cancellation does not *ipso facto* restore the land to entry, and, until notation of the cancellation upon the records of the local land office, no rights are acquired by the filing of an application to make entry. 45–596

25. While cancellation, by final decree, of a patent to public land does not operate to restore said land to entry, the act of May 14, 1880 (21 Stat. 140), requires that upon the *filing of a relinquishment* the land involved shall be held as open to settlement and entry without further action on the part of the Commissioner of the General Land Office. 45–597

26. Where title has passed from the Government by the issue of patent for a tract of public land, after which in a court of competent jurisdiction it is adjudged that another is entitled thereto, and upon failure of patentee to so convey a master in chancery deed is issued as decreed, the patentee is without authority thereafter to reconvey said land to the United States, and an attempt to do so does not revest title in the Government. 47–48

27. Coal deposits in land segregated from the public domain by entry and patent which is later annulled, is not subject to a preference-right claim or to the lawful possession of a coal claimant until its restoration is duly noted upon the records of the local land office. 47–219

28. The issuance of a patent under a duly asserted Mexican grant precludes the Secretary of the Interior from afterwards ignoring the existence of the patent or inquiring into its validity for the purpose of annulling it by his own order. 49–548

29. The general principle of law that a deed issued to a deceased person is voidable is overcome in the issuance of a patent for public lands by section 2448, Revised Statutes, which declares that in such event title shall inure to and become vested in the heirs, devisees or assignees of such deceased patentee as if the patent had been issued to the deceased person during life. 49–548

30. The existence of a voidable patent, regular on its face and covering lands subject to disposal under the law upon which it is predicated, pre-

vents the Land Department from assuming any jurisdiction over the patented lands adversely affecting the title prior to the annulment of the patent by a court of competent jurisdiction. 49–548

31. Where the question arises whether a patent, issued on an entry in accordance with the official plat of survey existing at date of entry, conveyed title to adjoining lands added by accretion, it is competent for the Land Department to decide whether the accreted land is public land subject to disposal or privately owned land over which it has no jurisdiction. 50–10

32. When the Land Department has once finally adjudged that the title to accreted land passed with the patent conveying the adjoining land, it is competent for it to take such action, within the scope of its powers, as will render its judgment effective, and, to this end, it may issue a supplemental patent in order that such determination may be given the fullest effect and be in such form as to become regularly a matter of local record. 50–10

33. Section 2448, Revised Statutes, permits of the issuance of a patent in the name of a deceased person, and where a patent is thus issued, rights under it may inure to the benefit of the remote grantees of such person. 50–10

34. Actual manual delivery of a patent issued for public land, subject to disposition under the public land laws, is not essential to the passing of title to the patentee, and the Land Department can not retain jurisdiction by withholding the delivery of the patent after it has been signed, sealed, countersigned, and recorded. 50–16

35. An unrestricted patent issued by the Government conveying public lands abutting upon a nonnavigable lake in the State of Montana, in which the common law with respect to riparian proprietorship has been adopted, carries with it an absolute title to the lake bed. 50–281

36. A patent for public lands in Alaska, entered subject to the provisions and reservations of the act of March 8, 1922, should contain a reservation of only that character of mineral for which the land was reported or believed to be valuable. 50–497

37. The fact that an applicant for a patent to public land consents to the insertion of a reservation in the patent does not authorize the Land Department, in the absence of a statute prescribing it, to incorporate such reservation therein. 50–623

38. A patent issued pursuant to the placer mining laws conveys title to the land and all minerals therein, except lodes known to exist within the boundaries of the placer at the date of the application for patent. 51–229

39. The provision in section 5 of the act of February 8, 1887, relating to the issuance to Indian allottees of patents after the expiration of the trust period, conveying the land in fee, discharged of the trust and free of all charge or incumbrance whatsoever, when construed in conjunction with subsequent legislation, does not prevent the issuance of restricted patents under acts of Congress which require reservations in grants under nonmineral land laws. 51–91

40. Notwithstanding that the Indian appropriation act of March 3, 1909, authorized the issuance of unrestricted fee-simple patents to religious organizations engaged in mission or school work on Indian reservations, it is obvious that Congress intended by the later act of September 21, 1922, that patents issued after the latter date to such organizations for lands on Indian reservations should specify that the lands will revert to the Indian owners when no longer used for missionary purposes. 50–676

41. The act of September 21, 1922, supersedes the act of March 3, 1909, as to the form of patent to be issued for lands on Indian reservations set apart for missionary or church purposes, and all patents issued thereafter should

contain the reversionary clause which the later act requires. 51–170

42. A patent issued after the passage of the act of September 21, 1922, erroneously conveying the fee-simple title to lands in which the act requires that a reversionary interest be retained, places the fee beyond administrative recall, but the extent of the actual grant to the patentee is, in contemplation of law, no larger than that which Congress intended. 51–170

43. Questions pertaining to the reformation of restricted patents issued in accordance with the provisions of the act of July 17, 1914, do not come within the jurisdiction of the Board of Equitable Adjudication. 50–185

44. Where by statute payment of the purchase price is all that remains to be done by one in order to acquire title to a tract of nonmineral public land, payment thereof entitles the purchaser to an unrestricted patent, if prior thereto, there had been no withdrawal, classification, or report that the land was prospectively valuable for mineral, unless the Government assumes the burden of proof and shows that the land was of known mineral character at that time. 50–242

45. Prior to the enactment of the act of February 25, 1920, Congress made no provision for the disposition of the minerals reserved in agricultural patents issued pursuant to the act of July 17, 1914, and on and after that date the mineral deposits named in the leasing act, reserved by such patents, became subject to disposition only in accordance with the terms of that act. 51–229

46. A pending application for patent, under the placer mining laws, of oil and gas lands should be denied and finally disposed of before the lands are offered for lease under competitive bidding. 50–262

47. A protest by one claiming under an oil lease executed by a homestead entryman against the entryman's consent to take a limited patent as prescribed by the act of July 17, 1914, will not lie where at the time of the submission of final proof the land was known to be prospectively valuable for petroleum deposits. 50–665

48. After the issuance of a patent to public land, with a reservation of the coal contents to the United States, the Land Department retains jurisdiction over the coal deposits only, and controversies afterwards arising between the surface owner and a lessee of the reserved deposits pertaining to the use of the surface must be adjudicated in the courts. 51–45

49. Where a limited patent has been issued in pursuance of the act of July 17, 1914, to a homestead entryman who, after making entry, secured a permit to prospect for oil and gas and voluntarily waived the mineral rights in the land in support thereof, the Land Department, in the absence of statutory authority, is without jurisdiction and has no power to accept surrender of the patent and to reissue an unrestricted patent, even though the land be in fact nonmineral in character. 51–63

50. Patents issued upon nonmineral entries made under the acts of July 17, 1914, and December 29, 1916, for lands covered by prospecting permits or leases, should contain recitals to the effect that the entries were allowed subject to the conditions of section 29 of the act of February 25, 1920, and to the rights of the prior permittees or lessees to use so much of the surface as is required for mining operations, without compensation for damages to crops and improvements resulting from the use of the lands for proper mining purposes. 51–166

51. The act of October 2, 1917, does not make the issuance of a patent thereunder mandatory, and the Secretary of the Interior may issue a permit to prospect for potassium, carrying with it a preference right to a lease upon discovery for not to exceed one-fourth of the area covered by the permit, upon lands embraced within

a subsisting oil and gas prospecting permit, provided that the permittee waives all rights to a patent. 51–180

52. The issuance of a patent for lands entered as agricultural pursuant to the act of July 17, 1914, containing a reservation of mineral other than that on account of which the lands were withdrawn or classified or reported as valuable, is without authority of law and ineffective to reserve deposits of such mineral, if there be any, in the lands patented. 51–477

53. The placer mining laws, which originally provided for the patenting of a fee estate in both the surface and the mineral deposits of public lands, were modified by the act of December 29, 1916, to permit of the issuance of separate patents for the reserved mineral deposits under the mining laws, and for the surface lands under the stock-raising homestead act. 50–192

PAYMENT

See Accounts; Fees; Indian Lands, IV; Practice; Repayment.

1. Instructions of October 24, 1912, respecting credit for prior payment upon second proof. 41–346

2. The Secretary of the Interior, in whom the extension act of August 13, 1914, imposed the authority to fix the date for payment of operation and maintenance charges in connection with irrigation projects as of the date fixed for each project, may for sufficient reason change the due date for future payments and modify the contract without violation of either the letter or the spirit of the act of May 15, 1922, and without invoking the procedure therein provided for confirmation of contracts under the latter act. 50–143

3. Moneys paid by grantees under the act of March 4, 1911, for timber cut from their rights of way should be deposited in the Treasury as funds arising from the sale of public lands and not to the "account of depredations upon public lands." 50–608

4. Instructions of June 9, 1919, regarding installment payments required on homestead and other entries after military service. (Circular No. 647.) 47–191

PER DIEM

See Accounts, 48–53.

PERMITS

See Coal Lands, V, IX; Oil, Gas, etc., Lands, III, IV, X; Phosphate Lands; Potash Lands; Saline Lands; Sulphur Lands; Water Exploration Permit.

PETITION FOR DESIGNATION

See Homestead, XV, XVII.

PETROLEUM RESERVE

See Mineral Land, 45–464.

PHOSPHATE LANDS

See Mineral Lands, 49–15; Oil, Gas, etc., Lands, I; Potash Lands.

1. Regulations of March 20, 1915, under act of July 17, 1914, concerning agricultural entries of phosphate lands. 44–32

2. Regulations of March 31, 1915, under act of January 11, 1915, validating placer locations on phosphate lands. 44–46

3. Regulations of May 22, 1920, act of February 25, 1920. (Circular No. 696.) 47–513

4. Phosphate regulations of May 23, 1924; paragraphs 4 and 5, Circular No. 696, amended. (Circular No. 936.) 50–503

5. The act of January 11, 1915, authorizing the completion under the placer mining laws of placer locations of lands containing deposits of phosphate rock, applies only to placer locations upon which the assessment work has been annually performed; and the Land Department is without authority to extend the remedial provisions of that act to locations upon which annual assessment work has not been performed. 44–356

6. An application to make homestead entry for lands within a phosphate withdrawal, filed prior to the act of July 17, 1914, providing for the entry of withdrawn phosphate lands with reservation of the phosphate deposits to the Government, rejected because of the withdrawal, and pending on appeal at the date of the act, can not be allowed, though amended to conform to the requirements of the act, in the face of an intervening application filed subsequent to and in conformity with the provisions of said act. 44–378

7. The act of February 25, 1920, contains no provision authorizing the issuance of permits to prospect for phosphate or to award leases as a reward for discoveries, but there is vested in the Secretary of the Interior discretionary authority to fix by general regulations the terms under which leases may be awarded under section 9 of that act. 50–427

8. The general phosphate regulations of May 22, 1920, being applicable to leases in proven fields, do not contemplate a situation in which considerable preliminary work is necessary before the actual opening of a mine can be undertaken, and, in order to make effective the purpose of the leasing act, it is clearly the duty of the Secretary of the Interior to prescribe such terms for leases as will promote the development of unproven fields. 50–427

PIPE LINES

See Right of Way, 43–110.

PLAT

See Patent; Survey.

PORTO RICO

See Federal Power Commission, 51–54.

1. Porto Rico is not a Territory of the United States within the meaning of that term as it is generally used by Congress in dealing with the Territories. 51–54

2. The reserved lands in Porto Rico and the waters on them are subject to the control of Congress, and the legislature of that island has no jurisdiction over them. 51–54

POTASH LANDS

See Alaska, IV; Coal Lands, 48–226, 443; 50–299, 300; Mining Claim, 48–6; Oil, Gas, etc., Lands, III; Patent, 51–180; School Lands, 44–120.

1. Regulations of March 20, 1915, under act of July 17, 1914, concerning agricultural entries of potash lands. 44–32

2. Regulations of March 21, 1918. (Circular 594.) 46–323

3. Regulations of December 1, 1917, regarding permits authorizing exploration of public lands for potassium. 46–245

4. Potash regulations of March 29, 1924; paragraph 2(a) of the lease form, Circular No. 594, as amended by Circular No. 781, further amended; paragraph 10, Part III, Circular No. 594, amended. (Circular No. 925.) 50–338

5. Potash regulations of September 24, 1924; survey of unsurveyed lands, act of October 2, 1917; Circular No. 594, amended. (Circular No. 961.) 50–644

6. Instructions of March 27, 1926, potash regulations; paragraph 6, Circular No. 594, amended. (Circular No. 1056.) 51–424

7. Under section 2 of the act of October 2, 1917, a lease may issue for deposits of potash in public lands in Sweetwater County, Wyo., also containing coal, on condition that the coal be reserved to the United States, but said section does not contemplate or authorize the granting of a prospecting permit. 46–498

8. No right will be regarded as initiated by the filing of an application under the regulations of December 1, 1917, for a permit to prospect for potash on public lands in Sweetwater

County, Wyo., which by section 2 of the act of October 2, 1917, are subject only to lease, and relative to which said regulations have no application. 46–499

9. Public lands in and adjacent to Searles Lake, Calif., withdrawn or classified as valuable for potash, and not embraced in an existing lease under the act of October 2, 1917, may be patented upon proper application, with the reservation of the deposits to the United States under the provisions of the act of July 17, 1914. 47–21

10. No authority exists for the issuance concurrently of a permit to prospect for potassium under the act of October 2, 1917, and of a permit to prospect for sodium under the act of February 25, 1920, for the same tract of land. 50–641

11. The act of October 2, 1917, provides that upon satisfactory showing of valuable deposits in lands embraced within a prospecting permit issued thereunder, a patent shall be issued for one-fourth of the land covered by the permit, and the provision in section 2 of the act restricting further disposals of the remaining lands to leases clearly contemplates that the right of the permittee to an unlimited patent should be restricted only by prior disposals under acts which authorize the issuance of such patents. 50–641

12. The act of October 2, 1917, does not make the issuance of a patent thereunder mandatory, and the Secretary of the Interior may issue a permit to prospect for potassium carrying with it a preference right to a lease upon discovery for not to exceed one-fourth of the area covered by the permit, upon lands embraced within a subsisting oil and gas prospecting permit, provided that the permittee waives all rights to a patent. 51–180

13. The provision in the first proviso to section 2 of the act of June 25, 1926, for the payment of costs of operation in making the potash explorations authorized by the act, applies only to the owners or lessees, or both, of the land *and* minerals or the mineral rights, and has nothing to do with a mere surface entryman or owner who has no interest in the mineral deposits. 51–626

14. Instructions of October 10, 1921, relative to bonds with potash leases. (Circular No. 781.) 48–221

POWER PERMITS

See INDIAN LANDS, 42–248; POWER SITES.

1. Where change of jurisdiction occurs from the Department of Agriculture to the Department of the Interior, over lands in national forests for which permits under the act of February 15, 1901, have been issued by the Secretary of Agriculture, by reason of the lands being eliminated from the national forest, no action by the permittee will be required nor will his status be in anywise affected thereby; but the permit papers transmitted to the Department of the Interior by the Department of Agriculture will be considered as constituting the complete application, notation thereof will be made on the records of the General Land Office, a blue print of the map and copy of the field notes forwarded to the local land office for notation and filing, and the permittee advised that the Department of the Interior has assumed jurisdiction. 42–248

2. All applications for preliminary and final power permits presented under the act of February 15, 1901, and the regulations of March 1, 1913, on lands within Indian reservations or allotments, should be filed with the register and receiver of the proper local land office, and after notation thereof transmitted to the General Land Office, whereupon they will be referred to the Geological Survey and the Commissioner of Indian Affairs for report and recommendation. 42–419

3. Projects involving both irrigation and power possibilities, but wherein the power possibilities constitute the

main factor of value, should be made the subject of permit under the act of February 15, 1901, and not of easement under the acts of March 3, 1891, and May 11, 1898; but where the reservoirs, structures, and canals essential for the storage and carriage of water for irrigation uses are separable from the reservoirs, structures, pipe lines, and ditches designed for development of electrical energy, they may be made the subject of separate applications, the former under the acts of 1891 and 1898, and the latter under the act of February 15, 1901. 42–562

4. Instructions of August 24, 1916, relating to inspection and hydrometric data in connection with power permits. 45–326

5. Regulations of December 1, 1917, regarding permits authorizing exploration of public lands for potassium. 46–245

6. Regulations of March 21, 1918. (Circular 594.) 46–323

POWER SITES

See Indian Lands, 42–4, 419; Mining Claims, 43–248; 50–656; Oil, Gas, etc., Lands, 48–628; Oregon & California Railroad Lands, 48–429, 431; Power Permits; Reservoir Sites; Right of Way; School Lands, 44–118, 119.

1. Circular of July 10, 1912, modifying paragraphs (*a*) and (*f*), section 8, of circular of June 6, 1908. 41–101

2. Instructions of November 20, 1920, relative to section 24 of the Federal water power act. (Circular No. 729.) 47–595

3. Instructions of February 8, 1922, relating to applications for lands affected by withdrawals for transmission lines under the Federal water power act; Circular No. 447, obsolete. 48–563

4. Paragraphs 6 and 8 of regulations of March 1, 1913, amended. 42–348

5. All applications for preliminary and final power permits presented under the act of February 15, 1901, and the regulations of March 1, 1913, on lands within Indian reservations or allotments, should be filed with the register and receiver of the proper local land office, and after notation thereof transmitted to the General Land Office, whereupon they will be referred to the Geological Survey and the Commissioner of Indian Affairs for report and recommendation. 42–419

6. Regulations of August 24, 1912, concerning rights of way for power purposes through public lands and reservations (except national forests). 41–150

7. Regulations of January 6, 1913, governing rights of way for electrical power transmission lines. 41–454

8. Right of way granted to Great Falls Power Co., under the act of March 4, 1911, for electrical power transmission lines. 41–460, 471

9. Regulations of March 1, 1913, governing rights of way for power purposes through public lands and reservations under the act of February 15, 1901. 41–532

10. All projects wherein the power possibilities are such as to constitute the main factor of value should be made the subject of permits under the act of February 15, 1901, and the regulations thereunder rather than of easements under the acts of March 3, 1891, and May 11, 1898. 41–524

11. Special rules governing protests against applications for permits for development, transmission, and use of power. 41–590

12. A withdrawal of public lands for power-site purposes under the provisions of the act of June 25, 1910, is a reservation within the meaning of the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes. 47–363

13. Sections 13 and 14 of the act of June 25, 1910, authorizing the Secretary of the Interior to reserve power and reservoir sites within Indian reservations, has no application to lands outside of Indian reservations. 42–4

14. Section 14 of the act of June 25, 1910, authorizing the Secretary of the Interior to cancel Indian trust patents issued on allotments within power or reservoir sites within Indian reservations, contemplates that such patents shall be canceled only in instances where the lands are required or reserved for irrigation purposes authorized under act of Congress. 42–4

15. An Executive order withdrawing a strip of land under the act of June 25, 1910, for right of way for electrical transmission lines, does not render the tracts lying on opposite sides of the withdrawn strip noncontiguous, and an entry embracing tracts on both sides of such strip may be allowed, but the entry papers and patents should contain an excepting clause excluding the area embraced in the withdrawal. 43–551

16. The purpose of section 24 of the act of June 10, 1920, is to permit of the agricultural or other use of lands withdrawn or classified as water-power sites in so far as same may not thereafter be needed and utilized by the United States, its permittees, or licensees for power purposes, as authorized and defined by said act; and one securing such limited patent has no right by virtue thereof, or by possession of the land thereunder, to utilize or develop the water-power resources, unless and until he shall have secured a permit or license from the Government. 47–556

17. The proviso to section 24 of the Federal water power act of June 10, 1920, which authorizes the approving or patenting, subject to the limitations and conditions of the act, of locations, entries, selections, or filings theretofore made for lands reserved as water-power sites, has reference only to such locations, entries, selections, or filings as were made prior to the passage of the act, and does not protect a stock-raising homestead application filed thereafter for lands previously withdrawn and included within a Federal power-site reserve. 48–184

18. The act of June 10, 1920, section 24 of which expressly provides that lands of the United States included in any project under the provisions of the act shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the public land laws until otherwise directed by the Federal Power Commission or by Congress, does not contemplate that lands thus reserved shall be subject to suspended filings or applications while they remain reserved. 48–197

19. Favorable action upon a petition filed by an applicant who has been denied the right to make a stock-raising homestead entry, resulting in the restoration of lands withdrawn under the provisions of the Federal water power act of June 10, 1920, does not confer any preferential right upon the petitioner to make entry. 48–184

20. The authority to construct a dam across the Pend d'Oreille River conferred upon the Pend d'Oreille Development Co. by the acts of February 25, 1907, and May 20, 1912, extends only to the jurisdictional interest of the United States in the navigable waters and does not dispose of any property rights of the Government in the public lands; and the plans and specifications for construction of the dam submitted to the Secretary of War for approval, which indicate the use of lands of the United States within Kaniksu National Forest and power-site reserve No. 72, should not be approved until permits for use of the lands shall have been secured from both the Secretary of Agriculture and the Secretary of the Interior under the act of February 15, 1901. 41–413

21. The issuance of a license for a water-power project as to a tract of land within a national forest which was relinquished to the United States as base for a lieu selection under the act of June 4, 1897, is a disposition of the land within the contemplation of section 2 of the act of September 22, 1922, and precludes the Secretary of

the Interior from quitclaiming it pursuant to section 1 of the latter act. 50-660

22. The fact that part of the land embraced in a forest lieu selection is within a power site or other withdrawal does not necessitate cancellation of the selection in its entirety, but it may be divided and permitted to stand as to the land subject thereto, upon designation by the selector of proper bases for such portion. 43-118

PRACTICE

See APPEAL; BURDEN OF PROOF; CERTIORARI; CONTEST, 44-579; 45-205; 46-501; 47-281; 48-83, 535, 537, 551; EVIDENCE; FINAL PROOF, 45-7, 514; 46-4; HEARING, 49-318; JURISDICTION; LAND DEPARTMENT, 49-250, 465; NOTICE; REHEARING, 41-175, 410; 42-55; RES JUDICATA.

I. Generally

1. Circular of April 9, 1915, amending rule 87, concerning admission of attorneys to practice. 44-114

2. Instructions of October 10, 1924, abrogating rule 61 of Practice. (Circular No. 962.) 50-656

3. The department can not recognize as binding upon it any stipulation entered into at a hearing by special agents and attorneys for the parties in interest which may preclude the consideration in the case of any question vital to the validity or regularity of the claim involved. 41-655

4. A decision by the register and receiver, or other proper officers acting in their stead, is more in the nature of a recommendation to the Commissioner of the General Land Office than a judgment, and the commissioner has jurisdiction to render his judgment, subject to review by the Secretary of the Interior, irrespective of or in the absence of such recommendation. 41-295

5. Where at the time of the initiation of a contest against a homestead entry contestant met the requirements of rules 1 and 2 of Practice, by stating that he intended to make homestead entry of the land and by showing himself qualified to make such entry, the contest will not abate merely because contestant thereafter becomes disqualified to make homestead entry of that land by exercising his right on other land. 41-518

6. Where a showing requiring cancellation of an entry is made in a contest proceeding, the mere fact that contestant is disqualified to make entry in exercise of the preference right does not cure the existing default of the entryman or entitle him to have the entry remain intact. 42-10

7. Where an entry under contest is canceled upon default of the contestee in failing to file answer within the time fixed by the Rules of Practice, such cancellation being the result of the contest, the preference right accorded by the act of May 14, 1880, arises, and the contestant can not be denied such right on the ground that he failed to move for judgment by default as provided by rule 14 of Practice as amended July 24, 1912. 44-156

8. It is not the duty of the Land Department to make a finding of facts in a case completely disposed of upon other grounds. 43-454

9. A notary public may be designated under rule 28 of Practice, by order of the register and receiver, to take testimony in a contest case. 43-330

10. Any matter at issue arising in connection with and within the jurisdiction of the Reclamation Service, should first be decided by the Reclamation Service, with right of appeal to the Secretary of the Interior. 44-11

11. It is not the policy of the Land Department to finally adjudicate the rights of entrymen solely upon technical considerations, but to afford claimants for public lands opportunity to be heard notwithstanding they may have, through mistake, inadvertence, or even laches, clearly forfeited their rights to a hearing under the Rules of

Practice, unless it appear from the record, with reasonable clearness, that they have no substantial claims to equitable consideration. 44–371

12. In a proceeding against a railroad selection alleging the existence of mineral upon the land embraced therein, the company is not required to introduce its evidence in advance of a showing by the Government in support of its charges. 46–435

13. A motion for new trial upon the ground of newly discovered evidence must relate to the issues of the original contest. 46–85

14. A special agent's report upon an entry is not evidence and can not be given evidential value as against any rights or claims asserted by the entryman; and where an entryman, after denying the charges based upon a special agent's report and applying for a hearing, withdraws such denial and application for hearing, such action constitutes at most an admission of the truth of the charges contained in the notice served upon him, but does not constitute a confession that the statements and assertions made in the special agent's report are true. 43–193

15. Depositions regularly taken under the provisions of the Rules of Practice become a part of the record of the case upon their receipt by the local officers, subject to any legal objection, which must be made at the hearing; if not so made it can not be successfully urged on appeal. 47–101

16. Where an entry has been regularly allowed upon a sufficient *prima facie* showing, or final or other proof submitted exhibiting compliance with the law under which the entry was made, the burden is upon the Government to sustain charges preferred against such entry or proof by a field officer. 47–185

17. The Rules of Practice prescribed for the orderly transactions of the business of the Land Department, and for the protection of private rights, do not recognize letters to the Commissioner of the General Land Office as appeals from the action of the local officers; such appeals must be duly served and filed *in the local land office* within the period of time allowed therefor. 47–192

18. No departmental regulation or practice, however long continued, can override a plain statutory right, unambiguous and not the subject of construction. 47–288

19. Motion for exercise of supervisory authority does not act as supersedeas. 47–419

20. In all cases where the last day of the statutory period within which an act is required to be performed falls on Sunday or a legal holiday, such period shall be held to include the next following business day. 47–590

21. In any proceeding against an entry on which final certificate has issued, the Government is bound to make a known transferee a party thereto, even though notice of such transfer has not been filed in the district land office as provided in rule 98 of Practice. 47–602

22. Personal attendance of a contestant at the hearing is presumptively essential to the proper presentation of a contest, and a motion for continuance and change of place, while a matter within the discretion of the local officers, should be considered from the standpoint of the ability of the contestant to attend under the circumstances, where he makes showing that, owing to sickness or some other unavoidable happening, he will be unable to be present at the hearing. 48–415

23. The principle previously enunciated by the department that rule 72, Rules of Practice, does not prevent the Commissioner of the General Land Office, before an appeal is taken, either on his own motion or where his attention is called to an error or omission, from reconsidering and correcting his decision in *ex parte* cases, is not to be construed as confined to cases of that class. 48–560

24. Where testimony in a contest is taken before an officer designated for that purpose by the register and receiver the submission of further testimony by either party at the final hearing before the local officers is permissible only upon a proper showing, followed by a proper order by those officers. 50–167

II. Rules of

25. Rule 83, relating to motions for rehearing, amended. 41–175

26. Rule 8, concerning contests, amended. 41–356

27. Rule 14, relating to contests, amended. 41–274

28. Revised rules of November 10, 1915. 44–395

29. Rule 3 amended September 23, 1915. 44–365

30. Rule 83 amended October 25, 1915. 44–366

31. Rule 87 amended April 9, 1915. 44–114

32. Rule 98, concerning transferees, added September 23, 1915. 44–365

33. Rule 46 of Practice, amended May 16, 1916. 45–91

34. Instructions of April 30, 1917, amending rule 94 regarding time limit of notice given or for filing papers. (Circular No. 549.) 46–100

35. Instructions of October 2, 1917 (Circular No. 567), amending Rule of Practice 95. 46–213

36. Revised rules of July 13, 1921. 48–246

37. Rule 14 of Practice as amended July 24, 1912 (41 L. D. 274), vacated, and rule 14 as approved December 9, 1910 (39 L. D. 395, 398), will hereafter control. 44–156

38. Instructions of January 12, 1925, rules 8 and 11 of Practice, amended. (Circular No. 976.) 51–34

39. Revised rules of September 1, 1926. 51–547

40. Rule 72 of Practice, providing that no motion for rehearing of decisions of the Commissioner of the General Land Office will be allowed, will not prevent the commissioner, before appeal is taken, either on his own motion or where his attention is called to an alleged mistake or omission, from reconsidering and correcting his decision in ex parte cases. 42–55

41. A decision by the Commissioner of the General Land Office respecting the right of the register of a local land office to make additional homestead entry, based upon the mere request of the register for an opinion as to his qualifications to make such entry, is not a final decision "relating to the disposal of public lands" within the meaning of rule 74 of Practice, and no appeal will lie therefrom. 45–182

42. Under rule 98 of Practice (44 L. D. 395, 411), an encumbrancer who has filed due notice thereof is entitled to such notice of any proceedings affecting the land as is required to be given the original entryman or claimant. 46–474

43. The statement in an application to contest that contestant if successful intends to acquire title by purchase of the land as an isolated tract, and showing his qualifications to make such purchase, meets the requirement of paragraph (*e*) of rule 2 of Practice that an applicant to contest must state under what law he intends to acquire title, provided it be shown that the land is of a character subject to that form of appropriation. 44–579

44. While the present Rules of Practice, approved December 9, 1910, make no provision for service of notice on a person of unsound mind, yet rule 9 of Practice, adopted December 23, 1896, does so provide and, as it has never been revoked, service in accordance with its provisions will be deemed sufficient. 47–3

45. Where claimant incorporates in his answer an objection to the sufficiency of the contest affidavit because not corroborated by at least one witness having personal knowledge of the facts, as required by rule 3 of Practice as amended September 23, 1915, and thereafter appears and renews the

objection at the hearing, he is entitled to a ruling thereon even though he joins issue by denial of the charges. 47–68

46. The provision of rule 8 of Practice as to filing proof of publication of notice of contest is mandatory and has all the force and effect of law, and in order to thus make proper service it is incumbent upon contestant to show strict compliance therewith. 47–100

47. The Land Department will not declare a forfeiture of the rights of a claimant to public lands on technical grounds, and failure to adhere to a technical construction of the Rules of Practice will not deprive him of an opportunity to be heard unless it appears that he has no substantial claim to equitable consideration. 50–363

48. The assessment of costs in protest proceedings against oil and gas permits is to be governed by the second sentence of rule 53 of Practice, which specifies that each party shall bear his proportionate share in the examination and cross-examination of witnesses. 50–637

III. Appeal

49. It is not essential that the notice of appeal provided for by rule 76 of Practice shall contain specifications of error, it being sufficient if specifications of error be filed within 20 days after service of notice of appeal, as provided by rule 80. 42–528

50. The Commissioner of the General Land Office has no authority to dismiss an appeal received and filed within the time prescribed by the Rules of Practice; and where an appeal filed in time is held defective by the commissioner, appellant should be given notice to cure the defect within 15 days, and, regardless of whether or not the defect be cured, the appeal, together with the record, should be transmitted to the department, with appropriate report and recommendation. 42–339

51. Cases will not be reopened under the doctrine announced in Jacob Harris (42 L. D. 611), where the proceeding has been closed and the entry canceled, without regard to the time that has elapsed since the final action of the Land Department; but cases in which the claimants have asserted in the courts their rights under entries which have been canceled as the result of proceedings begun more than two years after the issuance of receiver's receipt upon final entry, and have diligently and continuously prosecuted their claims, but relying upon the decision in the Harris case have dismissed their suits in court for the purpose of invoking the supervisory authority of the department, are not regarded as coming within the terms or spirit of this rule. 43–262

52. Appeal from the rejection of an application to enter entitles the applicant only to a judgment as to the correctness of that action at the time it was taken. 44–205

53. Where appeal is taken from the decision of the local land office, such office is without further jurisdiction in the case, and papers afterwards filed should be forwarded without action other than notation upon the records of their receipt. 46–164

54. A motion for rehearing will not be sustained on the ground that the decision on the appeal is not supported by the law and the evidence where that question was presented by the appeal and fully considered and finally disposed of in the decision. 50–149

IV. Hearing

55. Consolidation of the trial or hearing as to a number of entries is within the sound discretion of the Commissioner of the General Land Office or the register and receiver, and may properly be ordered, for convenience in the introduction and consideration of the testimony, where there are many material facts in common to all the entries; and one decision covering all the entries may be

rendered, instead of a separate decision as to each entry. 41–616

56. Under the general provisions of law charging the Commissioner of the General Land Office, under the supervision and direction of the Secretary of the Interior, with the public business relating to the public lands, he has full power, in case the register and receiver are deemed by him disqualified to preside at a hearing in a proceeding affecting public lands, to designate two proper officers to preside at such hearing in their stead. 41–295

57. The disqualification imposed by the act of January 11, 1894, upon registers and receivers to sit in a hearing in any cause pending in any local office where such officer is related to any of the parties in interest can not be waived by consent of the parties; and any proceeding had in contravention of the statute is without jurisdiction and void. 41–392

58. Where a contest proceeding is closed upon failure of contestee to appear, without any testimony being taken, he is not entitled, as a matter of right, to reinstatement of the contest, for hearing on the merits, in the absence of a showing by him of a good defense to the charge made in the contest; but to prevent injustice the Secretary of the Interior may in his discretion direct a hearing in such case. 42–608

59. In contemplation of rule 39 of Practice testimony should be taken in support of a contest notwithstanding contestee fails to appear at the hearing; and upon failure of the local officers to require such testimony, the case should be returned, under rule 96, for *ex parte* showing to support the charge. 42–608

60. A contest against an entry by one claiming an interest in or seeking to acquire title to the land is entitled to a regular hearing at which he may submit testimony in support of the contest, and it is not sufficient that he is notified of the date for the submission of final proof upon the entry and given opportunity to appear and cross-examine the final-proof witnesses; and failure of the contestant to appear, after notice, at the taking of the final proof, in no wise affects his right to a hearing on the contest. 44–144

61. The long-established and general practice of the department in public-land matters is that determinations are not made either upon reports of special agents or upon the statements of parties in interest in controverted matters, but after hearings, similar to trials in courts at law, at which all parties in interest may be heard. 51–141

V. Protestant

62. Special rules governing protests against applications for permits for development, transmission, and use of power. 41–590

63. Where an entry has been regularly allowed upon a sufficient *prima facie* showing, or final or other proof submitted exhibiting compliance with the law under which the entry was made, the burden is upon the Government to sustain charges preferred against such entry or proof by a field officer. 47–185

64. Inasmuch as a protestant against an oil and gas permit occupies merely the position of an informant without a preference right, the department may allow later protestants to appear and participate in the proceedings, even though the protestant first in time prosecutes his protest. 50–638

VI. Continuance

65. A motion for continuance in a contest proceeding, based on an allegation of inability to procure the attendance of witnesses at the time and place set for hearing, should set out in substance the matter which it is expected the absent witnesses would testify to, divulge the names of the witnesses, aver that their absence is not due to collusion and consent of contestant, and state that the applica-

tion for continuance is not for the purpose of delay. 45–168

66. The filing of a motion for continuance by a contestant does not act as a stay of proceedings; but contestant must appear at the time and place set for hearing and be ready to proceed with the case in event the application for continuance is denied; and failure to so appear constitutes a default. 45–168

67. Action on a motion for continuance of a hearing on the ground that the contestant will be unable to attend on account of sickness or some other unavoidable circumstance is not to be governed by the general provisions contained in the Rules of Practice relating to continuance on account of absent witnesses, which are inapplicable, but should be dependent upon the facts in each case. 48–415

68. The granting of a continuance in a contest case by the local officers is a mere interlocutory order, from which an appeal to the Commissioner of the General Land Office will not lie. 50–168

VII. Proceedings by the Government

69. Circular of February 26, 1916, governing proceedings in contests on reports by representatives of the General Land Office. 44–572

70. The Government is a party in interest in every contest, and the Land Department may properly consider all that the record contains in order to do justice in the case, irrespective of technical *inter partes* rules of pleading and practice, and whether the parties themselves are entitled to have any particular portion of the record considered or not. 43–343

71. The rules of practice relative to the abatement of private contests not diligently prosecuted will be applied to all proceedings against entries, whether on the part of the Government or of a private individual. 42–612

VIII. Notice

See CONTESTANT, 44–367.

72. Circular of September 4, 1915, concerning service of notice by registered letter to unknown heirs. 44–364

73. Where an appeal is taken from a decision rejecting an application because of conflict with a subsisting entry, it will not be considered unless duly served on the adverse claimant of record as provided in rules 47 and 48 of practice. 47–608

74. While rule 95, Rules of Practice, provides that notice of appeal must be served on an adverse party either personally or by registered mail, yet failure to receive such notice does not deprive the department of its jurisdiction to act upon the appeal. 50–5

75. One who makes homestead entry of a tract of land which is in the possession of another claiming from a different source fully disclosed by the records of the parish is constructively notified by such possession and records of the adverse claim; and land so held under color of title is not subject to entry, citing Krueger *v.* United States (246 U. S. 69). 47–17

76. The rules relating to notices *lis pendens* that are applicable to the courts have no application to proceedings before an executive department, and recordation in the office of the recorder of the county in which the lands are situated of proceedings in a local land office, there being no statutory requirement to that effect, neither constitutes constructive notice nor raises a presumption of notice. 50–199

77. Where there is no law making it the duty of a county recorder to receive and record notices of proceedings in a local United States land office, the Land Department is powerless to enforce any order or regulation it might issue directing the recordation of such notices. 50–199

78. A mortgagee who has filed notice of his mortgage interest in an unperfected homestead entry as provided by rule 98, Rules of Practice, must be given notice of any relinquishment filed, and no relinquishment will be accepted by the Land Department unless he joins therein or until he has had reasonable opportunity to make a showing. 48–582

79. A mortgagee who has filed notice of his mortgage interest in an unperfected homestead entry is entitled to protection, and by rules 2 and 98, Rules of Practice, must be made a party defendant in any contest or other proceeding adversely affecting such entry. 48–638

80. Where a mortgaged homestead entry has been canceled upon default of the entryman after submission of acceptable final proof, a subsequent entryman will be chargeable with notice of what an examination of the county records would have disclosed with respect to the mortgage. 51–519

81. The failure of an applicant for patent to a mining claim to comply with local laws or regulations as to the posting of a notice relating to improvements, while possibly subjecting a claim to relocation before entry, presents no valid basis for the cancellation of an entry in the absence of an adverse claim legally asserted. 47–74

82. The alleged absence, during the period of publication of notice of application for mineral patent of an official survey monument marking a single corner of a mining claim or claims included in an application, affords no valid basis of protest against the application if there was enough upon the ground covered by the application, when considered in the light of the published notice, to have put the protestant upon inquiry as to the area included in the application. 47–74

83. A published notice that an application for a mineral patent "is about to be filed" does not meet the requirement of section 2325, Revised Statutes, that a notice that an application for such patent "has been filed" shall be published, and consequently does not afford a basis for mineral patent. 50–661

84. A notice by a party not of record as a *bona fide* applicant for an oil and gas prospecting permit, reciting a mere intent to make application in the future, is not such a notice as is contemplated by section 12 (a) of the leasing regulations, or which puts the surface entryman under any duty to exercise his preference right. 50–409

85. An applicant for an oil and gas prospecting permit is charged with notice of the established practice and existing regulations governing the cancellation of permits and the restoration of the lands to further disposition. 51–343

86. The notation upon the local records of the cancellation of an oil and gas permit made contrary to existing regulations is without effect, and those seeking like permits for the land are put on notice as to the authority therefor and are not entitled to rely thereon in support of a claim of priority, though such notation, if in fact relied on, may be given equitable consideration in the absence of adverse claims. 51–343

87. A monument upon which a notice of an application for an oil and gas prospecting permit is posted, erected upon a site which is neither prominent nor open, nor convenient of access, is not in a "conspicuous place" within the meaning of section 13 of the act of February 25, 1920, and no preference right to a permit can be initiated by such posting and monumenting. 51–340

88. The posting of a notice of intention to make application for an oil and gas prospecting permit upon land embraced within a surface entry, as provided in section 13 of the leasing act, merely preserves for a limited period a preference right to a permit as against other applicants under that

section, but rights of claimants under other sections of the act are unaffected thereby. 50–409

89. One who could have learned of an adverse claim, but avoids notice thereof by failure to examine the land for more than three months before the execution of his homestead application therefor, can not be allowed to profit thereby. 51–42

90. Omission from the public notice which the departmental regulations require to be issued upon the offering of coal deposits for lease under the act of February 25, 1920, of the statement that a rental must be paid by the lessee does not excuse the lessee from the obligation to make such payment. 51–255

91. The words "conspicuous place" as used in statutes requiring the posting of notices are equivalent in meaning to open to view; catching the eye; easy to be seen; manifest; seen at a distance; clearly visible; prominent and distinct. 51–340

Contest

92. Instructions of October 25, 1913, concerning posting of contest notices. 42–470

93. Instructions of April 17, 1926, practice; contest; rule 14 amended. (Circular No. 1061.) 51–445

94. The old Rules of Practice were superseded by the revised rules which went into effect February 1, 1911, and no jurisdiction is acquired by publication under the old rules of notice of a contest filed after such rules ceased to be operative. 41–367

95. Under the rules and regulations of the Land Department it is the duty of a contestant to prepare for the approval and signature of the local officers the necessary notices to the defendant; and failure to furnish such notices, after notice to do so, is sufficient ground for rejecting the affidavit of contest and closing the case. 42–558

96. The provision of rule 8 of Practice that a contest shall abate in case of failure to serve notice thereof within the time fixed by that rule is not applicable where *prima facie* service of notice as required by that rule is shown; and where such *prima facie* service is questioned, on the ground that the person to whom the registered letter containing the notice was delivered was not authorized by the entryman to receive it, contestant should be afforded opportunity to show that such person was the duly authorized agent of the entryman or to apply for the issuance of an alias notice of contest. 44–373

97. Upon failure to file proof of service of notice of a contest within 30 days from the date of such service, as required by rule 8 of Practice, the contest abates *ipso facto*, in case no answer is filed, without the necessity of any action by the adverse party or the local officers. 44–568

98. Where notice of contest was served within the time fixed by rule 8 of Practice, the contest does not abate, under that rule, merely because contestant failed to serve with the notice a copy of the affidavit of contest, as required by rule 7, rule 12 specifically declaring that no contest proceeding shall abate because of any defect in the manner of service of notice in any case where copy of the notice or affidavit of contest is shown to have been received by the person to be served. 41–512

99. The provision of rule 8 of Practice as to filing proof of publication of notice of contest is mandatory and has all the force and effect of law, and in order to thus make proper service it is incumbent upon contestant to show strict compliance therewith. 47–100

100. Where notice of a contest is sent by registered mail, proof of delivery of the registered letter containing the notice to the agent of the addressee, authorized by him, in writing, to receive it, is a compliance with the requirement of rule 7 of the Rules of Practice that service of notice in such case must be evidenced by the post-office registry return receipt, "show-

ing personal delivery to the party to whom the same is directed." 41–124

101. Under the Rules of Practice notice of contest must be served upon the entryman, and service of notice upon his agent or attorney is insufficient. 50–165

102. Where notice in a contest against a homestead entry, alleging the death of the entryman and that there are no known heirs, was duly published and posted, and a copy thereof mailed to the deceased entryman both at his record address and at the post office nearest the land, such service of notice was sufficient to confer jurisdiction upon the local officers, and it was not necessary that a copy of the notice should also be mailed to the "unknown heirs" of the entryman. 42–329

103. Rule 8 of Practice is mandatory and contemplates, in service of notice by publication, that proof of compliance with all of the provisions of rule 10 must be filed within 20 days after the fourth publication of the notice, otherwise the contest abates *ipso facto*. 51–25

104. While the present Rules of Practice (approved December 9, 1910) make no provision for service of notice on a person of unsound mind, yet rule 9 of Practice, adopted December 23, 1896, does so provide, and, as it has never been revoked, service in accordance with its provisions will be deemed sufficient. 47–3

105. The Rules of Practice do not require a contestee to make personal service upon the contestant of a copy of his answer; but it is sufficient if delivery thereof at the contestant's address designated in the application to contest be shown; and the post-office receipt of the sending office to the contestee for the registered letter is sufficient evidence that he has met this requirement. 44–371

106. Section 2 of the act of May 14, 1880, contemplates that the notice of preference right to a successful contestant shall issue at a time when the land is subject to entry and be sent to contestant personally; and notice that the land will become subject to entry at some future day, or notice by publication, or notice to his attorney, unless shown to have been actually received by contestant, is not sufficient. 41–437

107. Failure to serve notice of the cancellation of an entry under contest upon the attorney designated by the contestant in his application to contest does not relieve the contestant from fulfillment of the law with respect to the exercise of his preference right if he himself had been duly notified thereof. 50–177

IX. Rehearing and Review

108. Rule 83, relating to motions for rehearing, amended. 41–175

109. Instructions of December 9, 1912, concerning time for filing motions for rehearing under rule 83. 41–410

110. Rule 72 of Practice, providing that no motion for rehearing of decisions of the Commissioner of the General Land Office will be allowed, will not prevent the commissioner, before appeal is taken, either on his own motion or where his attention is called to an alleged mistake or omission, from reconsidering and correcting his decision in *ex parte* cases. 42–55

111. A motion for rehearing will not be granted where no new question of vital importance is presented, or where there is such conflict of evidence that fair minds might differ as to conclusion therefrom, or that does not affirmatively show that the decision complained of is clearly wrong and against the palpable preponderance of the evidence. 46–473

112. Where an appeal is taken from a decision rejecting an application because of conflict with a subsisting entry, it will not be considered unless duly served on the adverse claimant of record as provided in rules 47 and 48 of Practice. 47–608

X. Intervener

113. In any proceeding against an entry on which final certificate has issued the Government is bound to make a known transferee a party thereto, even though notice of such transfer has not been filed in the district land office as provided in rule 98 of Practice. 47–602

PREEMPTION

See Coal Lands, 49–667; Repayment, 50–602.

PREFERENCE RIGHT

See Coal Lands, 48–176, 332; 49–180, 354; Contest; Contestant; Desert Land, 43–346, 497; 48–103; 49–413; Indian Lands, 48–362; 49–420, 421; Military Service, 47–301, 346; 48–39, 122, 302; Oil, Gas, etc., Lands, X; Relinquishment; Settlement, 48–1; 49–305.

I. Generally

1. Instructions of December 10, 1920, preference right on restored Carey Act lands. (Circular No. 731.) 47–605

2. Instructions of June 22, 1920, relative to sale of timber and preference rights of settlers on power-site lands; also as to exchanges. 47–411

3. Instructions of June 22, 1920, as to sale of timber and preference rights of settlers on lands withdrawn for power sites. (Circular No. 705.) 47–411

4. Instructions of April 2, 1925, preference right to purchase unappropriated lands in Louisiana erroneously meandered as water-covered areas. (Circular No. 991.) 51–86

5. Instructions of April 7, 1925, preference right to purchase unappropriated lands in Wisconsin erroneously meandered as water-covered areas. (Circular No. 994.) 51–107

6. Instructions of July 13, 1926, purchase of public land in New Mexico held under claim or color of title. (Circular No. 1079.) 51–488

7. Instructions of September 29, 1926, purchase of public lands in New Mexico; Circular No. 1079, modified. (Circular No. 1097.) 51–598

8. No preference right of entry can be secured by contest against an application for segregation of lands under the Carey Act. 41–379

9. One who acts as agent in negotiating the sale of the relinquishment of an entry is in privity with the entryman and the purchaser, within the meaning of the regulations of September 15, 1910, providing that at a hearing between a contestant claiming a preference right and an intervening applicant for the land "it shall be competent for the contestant to show that the former entryman, or some one in privity with him in the sale or purchase of the relinquishment, had knowledge of the filing of the affidavit of contest, in rebuttal of any showing made by the applicant." 42–250

10. The preference right accorded to one who files petition for the designation of land under the stock-raising homestead act of December 29, 1916, is not defeated by the preference right of additional entry of adjoining land accorded under the provisions of section 8 of said act, to one who thereafter makes an original homestead entry under section 2289, Revised Statutes. In the former case the right is initiated by the filing of a proper application for designation, and in the latter by the allowance of the original entry. 47–150

11. The preference right granted by section 8 of the stock-raising homestead act of December 29, 1916, is one of the "preference rights conferred by existing laws" expressly excepted from the operation of the joint resolution of February 14, 1920, as amended by the joint resolution of January 21, 1922, which granted preference right of entry to ex-service men of the war with Germany. 51–452

12. Settlement upon public land, not at the time subject to disposition and

entry, prior to its orderly and formal restoration, can not be invoked as a basis for a preference right under the act of May 14, 1880, and such settlement will not prevent the Secretary of the Interior from making disposition of the land under appropriate law in a manner which will exclude the settler from participation therein. 48–507

13. The provision in section 2 of the act of September 21, 1922, requiring that applications for the exercise of preference rights accorded by the act to persons who had placed valuable improvements upon or reduced to cultivation the lands specified therein, be filed within 90 days from the passage of the act or from the filing of the plat of survey, is merely a limitation upon the exercise of the preference right privilege, and does not restrict the authority of the Secretary of the Interior, conferred by the general provisions of the act, to sell, in his judgment and discretion, the lands, not adversely claimed, to any citizen of the United States. 50–498

14. The act of March 28, 1908, according a preference right to make desert-land entry, after survey, to one who has taken possession of and reclaimed or commenced to reclaim a tract of unsurveyed desert land, has no application to lands which, although theretofore surveyed and plat thereof filed, have been suspended from all forms of entry or disposal pending a resurvey. 43–497

15. The preference right accorded by the act of March 16, 1912, to certain settlers does not contemplate residence, but actual occupation in good faith for town-site purposes; and the operation of a warehouse is occupation within the meaning of that act. 47–323

II. Military

16. Instructions of November 18, 1921, relative to showing as to military service; preference right, act of February 14, 1920. (Circular No. 791.) 48–302

17. Instructions of May 1, 1922, preference rights accorded to discharged soldiers, sailors, and marines, act of January 21, 1922; Circular No. 678, superseded. (Circular No. 822.) 49–1

18. The act of March 8, 1918, relieving public-land claimants from penalty for forfeiture for failure to perform any material acts required by law under which the claims were asserted, during the period of their military service, suspends the running of the time within which preference right must be exercised, where a successful contestant enters the military service prior to the expiration of the preference-right period, without having exercised his right; but the time commences to run again immediately upon his discharge. 48–39

19. The preference-right privilege accorded to discharged soldiers, sailors, and marines by Public Resolution No. 29, act of February 14, 1920, attaches to lands restored to entry subsequently to the enactment of that act. 48–507

20. The preference-right privilege accorded by Congress to discharged soldiers, sailors, and marines upon the restoration of withdrawn lands is to be applied impartially and can not be defeated by the filing of an application to make entry prior to the restoration, even though the applicant be one of the preferred class. 49–111

III. Successful Contestant

21. Instructions of April 1, 1913, under Smith *v.* Woodford (41 L. D. 606), respecting preference right of contestant. 42–71

22. Regulations of April 1, 1913, respecting preference right of contestants, will not be given retroactive effect. 44–238

23. The preference right of entry awarded to a successful contestant is not an absolute and unconditional right to make entry regardless of the status of the land at the time of cancellation of the contested entry, but is only the preferred right, to the ex-

clusion of other applicants, within the preference-right period, to make such entry as the land may be subject to at the time he tenders his application. 41–71

24. Where, at the time a successful contestant makes entry in exercise of the preference right, the land is subject to entry only under the act of June 22, 1910, he is bound by the provisions of that act; and as said act does not authorize commutation of homestead entries made thereunder, commutation of such entry can not be allowed. 41–72

25. The act of May 14, 1880, contemplates that entry by a successful contestant in exercise of the preference right accorded by that act shall be made by contestant in his own name and for his own benefit; and where a contestant procures the Northern Pacific Railway Co., within the preference-right period, to make selection of the land under the act of July 1, 1898, for his benefit, in attempted exercise of his preference right, such selection is not a valid exercise of the right accorded by the act of 1880 and will not defeat a prior adverse application to enter the land. 41–121

26. Section 2 of the act of March 3, 1911, providing that where contests were initiated prior to the withdrawal of lands for national forest purposes the qualified successful contestant may exercise his preference right to enter within six months after the passage of said act, contemplates that a contestant seeking to exercise his preference right under that act shall be qualified as an entryman at the date he makes application to enter, and if then not qualified his application must be rejected, notwithstanding he may have been qualified at the time the preference right of entry was earned. 41–261

27. There is no statutory right of contest against a forest lieu selection, and no preference right of entry inures to a contestant who procures the cancellation of a selection. 41–278

28. The right of lieu selection accorded by the act of June 4, 1897, is not transferable; and the presentation of such a selection by a successful contestant, not in his own right but as attorney in fact for another entitled to make a lieu selection under that act, is not a proper exercise of the preference right of entry, and no right inures to contestant by virtue of such attempted selection. 41–284

29. A successful contestant in exercising his preference right of entry upon lands within a reclamation project is limited to one farm unit, although such unit may embrace less than the area covered by the entry he contested. 41–286

30. A successful contestant of an entry within a reclamation withdrawal is not barred of his preference right by section 5 of the act of June 25, 1910; but said section has the effect to postpone the exercise of such right until the project is so far completed that water can be applied to the land and the Secretary of the Interior has made public announcement of that fact. 41–286

31. Where a successful contestant within the preference-right period filed a soldiers' additional application, and after the expiration of that period filed a homestead application in attempted substitution for, and waived all claim under, the soldiers' additional application, he acquired no right under his homestead application so filed as against an adverse homestead application filed after cancellation of the entry and held suspended pending exercise by contestant of his preference right. 41–410

32. Section 2 of the act of May 14, 1880, contemplates that the notice of preference right to a successful contestant shall issue at a time when the land is subject to entry and be sent to contestant personally; and notice that the land will become subject to entry at some future day, or notice by publication, or notice to his attorney, unless shown to have been actually

received by contestant, is not sufficient. 41–437

33. Any question as to the preference right of a successful contestant to make entry of the land in controversy can only arise in connection with an application by contestant to exercise such right, and can only be raised by some one asserting a superior right to enter the land. 42–64

34. In event a successful contestant die after filing application to enter in exercise of his preference right, but before allowance of entry thereon, his heirs, by virtue of the provisions of the act of July 26, 1892, succeed to his rights and may carry the application to entry; but an heir can not while holding a homestead entry in his own right perfect the application of a deceased contestant. 42–340

35. The preference right of entry conferred by the act of May 14, 1880, upon one who "has contested, paid the land-office fees, and procured the cancellation" of a homestead entry is a statutory right which the Land Department is without authority to deny or disregard, by regulation or otherwise. 42–172

36. Where after the initiation of a contest against a homestead entry the lands are included within a first-form withdrawal under the reclamation act, but are subsequently relieved from the withdrawal and restored to entry, the contestant, upon the successful termination of the contest subsequent to the order of restoration, is entitled to exercise his preference right of entry for the land. 42–172

37. A successful contestant can not be permitted to make entry in exercise of his preference right while the lands he seeks to enter are embraced in a first-form withdrawal under the reclamation act; but under the regulations of August 24, and September 4, 1912, he may exercise that right at any time within 30 days from notice that the lands involved have been released from withdrawal and made subject to entry. 43–212

38. The right of contest and resultant preference right of entry accorded by the act of May 14, 1880, do not extend to forest lieu selections under the act of June 4, 1897. 43–119

39. A preference right of entry is acquired by a successful contest against an entry within a forest reservation, but such right remains suspended until the land shall be restored and become subject to entry. 43–458

40. The act of May 14, 1880, awarding a preference right of entry to successful contestants, contemplates that contestant may exercise such right by any form of appropriation which he may use in acquiring title to the land; and where a contestant procures the Northern Pacific Railway Co. to make, for his benefit, within the preference right period, a selection of the land under the act of July 1, 1898, such selection is a proper exercise of the preference right. 43–536

41. Where a contestant purchases and files a relinquishment of the entry under contest, executed by the entryman prior to the initiation of the contest, and placed in the hands of another for speculative purposes, no preference right inures to him on the presumption that the relinquishment was the result of the contest; and by thus filing the relinquishment instead of prosecuting the contest, the contestant abandons his contest and all rights thereunder, and the rights of an adverse settler then on the land thereupon attach and bar the allowance of entry to contestant. 43–348

42. Where an entry under contest is canceled upon default of the contestee in failing to file answer within the time fixed by the Rules of Practice, such cancellation being the result of the contest, the preference right accorded by the act of May 14, 1880, arises, and the contestant can not be denied such right on the ground that he failed to move for judgment by default as provided by rule 14 of Practice as amended July 24, 1912. 44–156

43. In the exercise of his preference right a successful contestant may procure the Northern Pacific Railway Co. to make for his benefit, within the preference right period, a selection of the land under the act of July 1, 1898, if the land is at that time subject to that form of appropriation; but if the land is at that time occupied by settlers and not subject to selection by the company for its own benefit, the mere existence of the preference right in the contestant does not make it subject to such selection by the company in his behalf. 44–225

44. After an entry has been canceled as the result of a contest, the right of the contestant to make entry in exercise of his preference right is a matter solely between him and the Government, and the entryman has no longer any such interest in the land as entitles him to be heard with respect to the contestant's right of entry; nor does the entryman, by settlement and the filing of an application to make second entry of the land within the preference-right period, acquire any right as against the successful contestant. 45–453

45. The allowance of an entry to a successful contestant in exercise of his preference right constitutes a determination by the Land Department that he is *prima facie* entitled to such right, and one attacking such entry on the ground of the entryman's disqualification, assumes the burden to establish the truth of the charge. 45–453

46. The preference right of entry accorded a successful contestant by the act of May 14, 1880, is a statutory right which can not be extinguished by any regulation in fatal conflict with and not authorized by law. 47–288

47. While the preference right accorded by the act of May 14, 1880, is not assignable or transferable, a successful contestant in the exercise thereof is not required to show that he is seeking the land involved for his own continued use and benefit; and he may utilize a valid soldiers' additional right in the exercise of such preference right even though he contemplates transferring the land to another when the entry is perfected. 47–298

48. In the exercise of the preference right accorded to settlers under the provisions of the act of June 9, 1916, lands in more than one quarter section may be embraced in the application where there is fencing, improvement, or other evidence of appropriation on each of the tracts sufficient to identify them as being embraced within the settlement. 47–297

IV. Coal Claimant

49. A small amount of open-cut work, merely for prospecting purposes, does not meet the requirements of the coal-land laws conferring a preference right of purchase upon one who opens and improves a coal mine upon the public domain. 41–177

50. Neither a coal declaratory statement nor application to purchase is an "entry" within the meaning of the act of May 14, 1880, and no preference right of entry can be secured by contest against the same. 41–275

51. Coal deposits in land segregated from the public domain by entry and patent which is later annulled, is not subject to a preference-right claim or to the lawful possession of a coal claimant until its restoration is duly noted upon the records of the local land office. 47–219

52. The act of February 25, 1920, does not contemplate that an agricultural entry made after its approval shall constitute the basis for a preference right to a prospecting permit under section 20 thereof. 47–588

53. A coal claimant's preference right of entry under section 2348 *et seq.*, Revised Statutes, is essentially of the same legal character and status as a settler's right. 47–219

54. In order to obtain a preference right under the coal-land laws by opening and improving a mine, it is essential that the claimant operate under a definite design looking to actual production of coal; that the

excavation be of a substantial character; and that the deposit disclosed be of such value as to warrant the conclusion that the land is coal in character. 47–395

55. One who successfully contests the *prima facie* claim of the State to a tract in a school section, upon the ground of the known coal character of the land at the date of the school land grant, gains thereby no preference right to make coal entry for the tract involved. 47–58

PRICE OF LAND

See Coal Lands, 42–320, 321, 571; Indian Lands, 41–637; Timber and Stone Act, 43–554.

PRIVATE ENTRY

See Warrant.

1. Prior to the subjection of public lands to private entry four preliminary steps were required by the statutes: (*a*) Survey into legal subdivisions; (*b*) a proclamation by the President exposing the lands to public sale; (*c*) publication of notice of sale; (*d*) offering at public outcry by the register of the United States land office of the district in which the lands were situated; and the lands remaining undisposed of at the close of such sale thereafter became subject to private entry. 50–438

PRIVATE LAND CLAIMS

See Equitable Adjudication, 49–562; Patent, 49–548; Public Lands, 49–548; Survey, 46–301; 48–87, 88; 49–548; Railroad Lands, 42–553.

1. Instructions of March 21, 1925, exchange of lands within the Santa Barbara grant for timber within national forests, New Mexico. (Circular No. 993.) 51–75

2. Instructions of July 13, 1926, purchase of public land in New Mexico held under claim or color of title. (Circular No. 1079.) 51–488

3. Instructions of September 29, 1926, purchase of public lands in New Mexico; Circular No. 1079, modified. (Circular No. 1097.) 51–598

4. Instructions of August 2, 1926, relief of settlers and entrymen on Baca Float No. 3, Arizona. (Circular No. 1088.) 51–516

5. The small-holding act of March 3, 1891, has reference to individual and personal rights of adverse possession, and there is no authority under the act for merging the several and separate adverse claims of a number of persons, claiming as heirs and asserting and maintaining exclusive right and possession to different portions of a tract inherited from a common ancestor, into one claim for the entire tract, either in the names of all of the heirs or in the name of one representing all. 41–69

6. The limitation in the act of February 26, 1909, extending the time for filing small holding claims under the act of March 3, 1891, that such extension shall not "extend to persons holding under assignments made after March 3, 1901," applies only to voluntary assignments, and has no application to involuntary assignments through judicial sales for the benefit of creditors. 42–59

7. A duly asserted Mexican grant segregates the land embraced therein until the claim under the grant is extinguished by a court or other tribunal of competent jurisdiction, and its mere existence prevents the allowance of a homestead entry within it, regardless of the question of whether the grant is valid or invalid. 49–548

8. A finding in favor of Mexican grant claimants by the Board of Land Commissioners created by the act of March 3, 1851, to ascertain, adjudicate, and settle private land claims in the State of California, when confirmed by a decree of the district court, is conclusive against the United States and all claiming under them, and the issuance of a patent pursuant thereto deprives the Land Department of further jurisdiction in the matter. 51–591

9. Lands within a grant, declared invalid by a court of competent jurisdiction, do not become subject to homestead entry, even by one having the preferred status accorded by Congress to discharged soldiers, sailors, and marines, until a time fixed for their opening in an order of restoration issued by the Secretary of the Interior, and an application to make entry filed prior to the prescribed date can not be held suspended to await restoration with a view to conferring any rights upon the applicant. 49–548

10. As the United States is without jurisdiction over the vacant and unappropriated private lands within the State of Texas, it has no duty to perform in the matter of surveys, determinations, or adjustments necessary to define the rights of any parties in interest; they must be performed by the State, or such tribunals as may have authority therefrom. 47–372

PROPRIETOR

1. The word "proprietor," as employed in section 2289 of the Revised Statutes as amended by section 5 of the act of March 3, 1891 (26 Stat. 1095), means "owner," and an essential to ownership is present possession or enjoyment, or the present right to acquire possession. 46–290

2. One having only a vested estate in remainder in lands is not "proprietor" thereof within the meaning of section 5 of the act of March 3, 1891, and such interest in lands does not disqualify him from making homestead entry. 46–290

PROSPECTING PERMITS AND COAL-MINING PERMITS

See ALASKA, COAL LANDS, 48–49, 50, 597; OIL, GAS, ETC., LANDS, III, IV; PHOSPHATE LANDS; POTASH LANDS; SALINE LANDS.

PROTEST

See CONFIRMATION, 42–566, 611.

PROTESTANT

See CONTEST, 43–344; PRACTICE, 47–185.

PUBLIC LANDS

See LAND DEPARTMENT; RIPARIAN RIGHTS; SUPERVISORY AUTHORITY OF THE SECRETARY; SURVEY.

1. Methods of keeping records and accounts relating to public lands. (Circular 616.) 46–513

2. Acts of Congress granting portions of the public lands for any purpose, or providing for their disposition, should be strictly construed and the grant should not be enlarged by implication. 41–176

3. Land segregated from the public domain, whether by patent, reservation, entry, selection, or otherwise, is not subject to settlement or other form of appropriation until its restoration to the public domain is noted upon the records of the local land office. 46–109

4. Under section 2 of the act of October 2, 1917, a lease may issue for deposits of potash in public lands in Sweetwater County, Wyo., also containing coal, on condition that the coal be reserved to the United States, but said section does not contemplate or authorize the granting of a prospecting permit. 46–498

5. No right will be regarded as initiated by the filing of an application under the regulations of December 1, 1917, for a permit to prospect for potash on public lands in Sweetwater County, Wyo., which by section 2 of the act of October 2, 1917, are subject only to lease, and relative to which said regulations have no application. 46–499

6. The Land Department has no jurisdiction over the bed of a meandered lake, or authority to grant a potash lease therefor; and under the law of Nebraska it appears that if navigable, title thereto is in the State, but if nonnavigable, that title is in the riparian owners. 47–71

7. So far as relates to the beds of meandered lakes or other bodies of water, it appears that the common law is still in force in the State of

North Dakota, and that thereunder, if navigable, title to the soil is in the State, but if nonnavigable, that title is in the riparian owners. 47–72

8. Lands within a valid Mexican grant did not become, under the treaty with Mexico, a part of the public domain of the United States. 49–548

9. Public lands in the possession of one who is in good faith asserting ownership of a claim or right under color of title are not "unappropriated" public lands, and are not, therefore, subject to settlement or entry by another under the homestead laws. 49–549

10. Whenever the question arises in any court, State or Federal, as to whether the title to land, which had once been the property of the United States, has passed, that question must be resolved by the laws of the United States; but when, according to those laws, the title shall have passed, then that property, like other property in the State, is subject to the laws of the State, so far as those laws are consistent with the admission that the title passed and vested according to the laws of the United States. 50–678

11. With respect to public lands bordering on nonnavigable bodies of water, the Government assumes the position of a private owner, and when it parts with its title to those lands, without reservation or restriction, the extent of the title of the patentee to the lands under water is governed by the laws of the State within which the lands are situated. 50–679

12. Where the title to lands sought to be acquired under the public land laws is involved in litigation, valid claims thereto can not be initiated by location, filing, or other assertion of claim, so long as the question of title is *sub judice*. 51–89

13. Lands omitted from the original surveys through error in running the meander lines of lakes or other bodies of water, to which claims of ownership are predicated upon titles derived under patents issued in conformity with the original surveys, are not such vacant, unappropriated lands as to be subject to general disposition under the public-land laws prior to the determination of the claims arising under the old titles. 51–197

PUBLIC OFFICE

1. The mere election of a homestead entryman to public office, and the taking of the oath of office thereunder, does not *ipso facto* carry with it exemption from residence upon the homestead; but where the entryman can reside upon his claim continuously, or at frequent intervals, and at the same time perform the duties of his office, he should do so as an evidence of his good faith, and where his good faith is thus shown he may be given credit, under the five-year law, for constructive residence during such periods as he is necessarily absent in the performance of the duties of his office. 44–337

PUBLIC SALE

See INDIAN LANDS, 43–284; ISOLATED TRACT, 42–1, 12, 88, 151, 180, 227, 466; SELECTION, 43–381.

1. Circular of January 11, 1915, governing offerings at public sale under section 2455, Revised Statutes, and the act of March 28, 1912. 43–485

2. Instructions of April 18, 1914, concerning citizenship of applicants to purchase at public sale. 43–220

3. The act of March 3, 1909, providing for the sale of isolated tracts of public lands in Imperial Valley, has no application to lands which were, at the date of the passage of that act, included in a bona fide claim under the public-land laws. 42–545

4. Persons who have declared their intention to become citizens of the United States may purchase public lands offered at public sale in all cases where the right of purchase is not limited by statute to native-born or naturalized citizens. 43–90

5. Where a tract of land was sold at auction, as a whole, as containing a specified number of acres, and the purchaser at such sale bid for and purchased the tract at so much per acre, relying upon the statement of the superintendent of the sale as to the number of acres it contained, and it subsequently developed that the tract contains an excess acreage beyond any reasonable contingency and wholly beyond the contemplation of the parties, the purchaser has the option of paying for the excess acreage or having the sale rescinded with the privilege of applying for repayment of the purchase money. 44–44

PUMICE

See MINERAL LANDS, 41–584.

PURCHASE AND PURCHASER

See COAL LANDS; INDIAN LANDS; ISOLATED TRACTS; PREFERENCE RIGHT; PRIVATE ENTRY; REPAYMENT, 49–479.

1. A purchaser relying upon a Government patent issued in accordance with the official plat of survey at date of entry and a departmental ruling which held that the patent carried title to lands added to the original survey by accretion, is such holder under color of title, although not in actual occupancy of the land, as to possess equities creating a claim which affords an obstacle to the allowance of a forest lieu selection, if the lands are indeed public lands. 49–253

RAILROAD GRANT

See INDIAN LANDS, 42–209; 45–17, 193, 322, 473; MINERAL LANDS, 46–85, 435; 48–175, 573; MINING CLAIM, 49–588; NATIONAL FORESTS, 42–118; OREGON & CALIFORNIA RAILROAD LANDS, 46–424, 447; PATENT, 41–140; 42–396; RAILROAD LAND; REPAYMENT, 45–452; 49–173, 541; RIGHT OF WAY, 43–78, 392, 410, 556; SETTLEMENT, 45–92; SMALL HOLDING CLAIMS, 45–80, 617; WAGON ROAD GRANT.

I. Generally

1. Instructions of December 13, 1919, relative to price of land within granted limits of railroad. (Circular No. 664.) 47–260

2. Instructions of December 13, 1919, as to price of land within granted limits of railroad. (Circular No. 664.) 47–260

3. Instructions of March 28, 1925, notice of listings under railroad and other public-land grants. (Circular No. 988.) **51–80**

4. Instructions of July 9, 1926, right of land-grant railroad companies to list less than a legal subdivision. (Circular No. 1077.) 51–487

5. Selections under the exchange provisions of the act of July 1, 1898, based upon uncompleted claims relinquished under that act because in conflict with the grant to the Northern Pacific Railway Co. must in every instance be confined to one transaction and to lands in a compact body in one land district; but selections based upon completed claims relinquished under that act need not be confined to a single transaction and may embrace noncontiguous tracts in different land districts. 41–271

6. The provision in the act of July 2, 1864, amending the act of July 1, 1862, making a grant to the Central Pacific Railroad Co., that said grant "shall not defeat or impair any * * * homestead * * * or other lawful claim," excepts from the grant a tract of unsurveyed land which at the date of the definite location of the line of road, and down to the date of the filing of the township plat of survey, was successively occupied by qualified homestead settlers intending to make entry; and failure of the settler then occupying the land to assert his claim within three months after the filing of the township plat does not inure to the benefit of the company, but he may assert his claim at any time prior to intervention of an adverse settlement right. 42–589

7. When the character of land selected by the railway company is put in issue, the burden is on the company to show by clear and convincing evidence that the land is of a character subject to the grant. 43–546

8. No interest whatever, contingent or otherwise, passed under the railroad grant of July 27, 1866, to lands in odd-numbered sections which were embraced in valid homestead settlements existing at the time the company filed its map of definite location. 47–303

9. Where a declaratory statement or entry for lands within the primary limits of a grant to a railroad company was not filed or made until after the date of definite location of the road, the grant to the company attached and, under the terms of the act of June 22, 1874, the lands may be assigned as base and an equal quantity of unappropriated, nonmineral lands elsewhere within the limits of the grant may be selected in lieu thereof. 51–173

10. The price of lands in an odd-numbered section within the limits of a railroad grant, but excepted therefrom, is $1.25 per acre; and where a purchaser thereof has been required to pay a higher price, he is entitled to the repayment of such excess. 47–258

11. As no map of definite location was ever filed in the matter of the contemplated branch line of the Northern Pacific Railway Co. from Wallula Junction, Wash., to Portland, Oreg., there was no grant, hence no alternate reserved sections. The price of lands in the even-numbered sections in the area involved, therefore, was $1.25 per acre; and where a purchaser thereof has been required to pay a higher price, he is entitled to the repayment of such excess. 47–628

12. The act of June 22, 1874, as amended by the act of August 29, 1890, authorizing the exchange of lands within railroad grants where entries were allowed after the rights of a railroad company had attached, was not a grant of lands in place, nor an indemnity grant in the ordinary sense of that term, but one more in the nature of a lieu selection, not limited to odd-numbered sections. 49–180

13. The act of February 8, 1887, confirming the assignment to the New Orleans Pacific Railway Co. of the grant made to the New Orleans, Baton Rouge and Vicksburg Railroad Co. by the act of March 3, 1871, gave the right of entry to a transferee of an actual settler, occupying land within the granted limits at the date of the definite location of the road and remaining in possession thereafter, and mere tardiness in asserting his claim does not estop him from seeking title adversely to the railroad company. 49–486

14. Lack of diligence in securing evidence to show that a settlement claim was excluded by the act of February 8, 1887, from the confirmation of the grant to the New Orleans Pacific Railway Co. is not sufficient to defeat the right of the transferee to make entry, if the land was in fact embraced within a valid subsisting claim at the date of the definite location of the road and continued as such thereafter. 49–486

15. The fact that the grant to the Atlantic & Pacific Railroad Co., or its successors in interest, included the coal in the granted lands, does not carry the right in making an exchange of lands under the act of April 28, 1904, to select lands containing coal of greater quantity and superior quality than that contained in the base lands, inasmuch as such selection would be effected upon unequal terms. 49–522

16. A grant of lands to a railroad did not become fixed and attached until the map of definite location had been filed, and until then the mere filing of a map of general route, although followed by a withdrawal, did not impress the odd sections with a double minimum price. 49–541

17. The act of July 1, 1898, authorizing the adjustment of disputes arising out of conflicting claims of settlers and the Northern Pacific Railway Co. to lands within the latter's grant, warrants the making of selections by the company under the acts providing for surface entries. 49–587

18. Neither the provisions of the act of July 1, 1898, nor those of the act of February 27, 1917, amendatory thereof, respecting relinquishments by the Northern Pacific Railway Co. in favor of settlements upon unsurveyed lands within the limits of its grant, mandatorily require that company to relinquish or reconvey any tract of land within its grant in favor of a settler. 50–539

19. The Land Department has the authority to issue permits to prospect for oil and gas pursuant to the act of February 25, 1920, on lands within the primary limits of railroad grants, which, if nonmineral in character, would inure to the grantees under those grants. 51–196

20. The act of July 17, 1914, confers upon railroad grantees the right to select the surface of lands, which, except for that act, would be excluded from the grants on account of their mineral character, but neither a railroad company nor any person claiming under a railroad grant is entitled to a preference right to a permit or lease under the act of February 25, 1920, by reason of such selection. 51–196

II. Indemnity

See PATENT, 45–166.

21. Instructions of May 2, 1919; settlers on indemnity lands in Montana. (Circular No. 643.) 47–138

22. In selecting indemnity lands for the loss of mineral lands the Northern Pacific Railway Co. is not limited to the State in which the loss occurred. 41–571

23. The company may select as indemnity lands within the primary limits, which at the time the grant attached were "reserved, sold, granted, or otherwise appropriated," but which have since been relieved of that impediment and at the time of the selection are unoccupied or unappropriated public lands. 41–571

24. The indemnity selection for lost mineral lands may be made within 50 miles of the line of the road. 41–571

25. The act of March 3, 1911, declaring the lands within the ceded portion of the Gros Ventre, Piegan, Blood, Blackfoot, and River Crow Indian Reservations to be part of the public domain, and that no patent should be denied to entries of such lands theretofore made in good faith under any laws regulating the entry, sale, or disposal of public lands, did not have the effect to validate, in the presence of an intervening adverse claim, an unapproved indemnity selection by the Northern Pacific Railway Co., theretofore proffered, rejected, and held suspended at the date of the act. 42–209

26. Indemnity selections by the Northern Pacific Railway Co. under the act of July 2, 1864, for lands lost to its grant by reason of being mineral in character, may be made of the nearest available lands within 50 miles of the line of road. 43–302

27. In selecting indemnity for the loss of mineral lands, the Northern Pacific Railway Co. is not limited to the State in which the loss occurred. 43–302

28. Lands selected as indemnity by the Northern Pacific Railway Co. for mineral lands lost to its grant are not required to be nearest to the lost lands. 43–302

29. In view of the fact that the Northern Pacific Railway Co.'s right of indemnity selection is far in excess of the available lands within the limits of its grant subject to selection, compliance with the provision in the act of July 2, 1864, that the lands selected as indemnity for lost mineral lands shall be nearest to the line of road, will not be required. 43–302

30. The Land Department is without jurisdiction to compel the Santa Fe Pacific Railroad Co. to carry out contracts made by its predecessor, the Atlantic & Pacific Railroad Co., to select certain lands under the indemnity provisions of the grant made to said company by the act of July 27, 1866, for the benefit of the parties with whom such contracts were made; nor is the Land Department authorized to suspend action upon pending indemnity selections by the Santa Fe company for the purpose of forcing that company to carry out such contracts. 43–467

31. The fact that losses assigned by the Northern Pacific Railway Co. to support an indemnity selection of agricultural lands might, if free, be used as bases for selections of coal and iron lands, will not warrant the release of such bases, after issuance of patent upon the selections, and the acceptance, in substitution therefor, of mineral-land losses, which are restricted to use as bases for agricultural lands only. 44–218

32. The act of March 3, 1911, declaring the lands within the ceded portion of the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Indian Reservations to be part of the public domain and open to the operation of laws regulating the entry, sale, or disposal of the same, and that no patent should be denied to entries of such lands theretofore made in good faith under any of the laws regulating the entry, sale, or disposal of public lands, did not operate to validate railroad indemnity selections theretofore presented and properly rejected, but pending on appeal at the date of the act, as against adverse claims. 44–78

33. The department will not at this late date question the right of the Northern Pacific *Railway* Co. to select lands under the act of March 2, 1899, as successor to the Northern Pacific *Railroad* Co., on the ground that at the date of that act the Northern Pacific *Railroad* Co., named as grantee therein, had been foreclosed and was no longer a going concern, and that the act was therefore ineffective for want of an existing grantee. 45–6

34. A railroad indemnity selection filed during the preference-right period of 60 days from the date of the filing of the township plat accorded the State by the act of August 18, 1894, within which to make selection, should not be rejected but received and held suspended until final adjudication of the rights of the State under any selection filed by it during the preference-right period. 45–37

35. A railroad indemnity selection filed during the preference-right period of 60 days from the date of the filing of the township plat accorded the State by the act of August 18, 1894, within which to make selection, should not be rejected, but received and held suspended until final adjudication of the rights of the State under any selection filed by it during the preference-right period. 45–37

III. Lands Excepted

35. Under the excepting clause in the grant to the Central Pacific by the act of July 1, 1862, as amended by the act of July 2, 1864, the term "iron land" will be construed in its ordinary meaning; that is, land not only valuable for iron, but as between iron and other mineral content, chiefly valuable for iron. 46–476

36. In a contest involving the question as to whether a settlement on lands within the primary limits of a railroad grant excepted the land from the grant, the claimant may offer oral testimony in support of his claim if the facts as to such settlement are not disclosed by the records of the Land Department. 47–304

37. A claimant, asserting that lands were excepted from a railroad grant by a settlement existing at the date of the filing of the company's map of definite location, must show by a preponderance of the testimony that the settlement was made in good faith

to obtain title under the homestead or preemption laws, and that the settler was fully qualified; but he is not required to show that rights acquired by reason of such settlement passed to him through conveyances from subsequent occupants of the land who were also qualified to make and maintain such a settlement. 47–304

38. An island in an odd-numbered section within the limits of the grant made by section 3 of the act of July 2, 1864, to the Northern Pacific Railroad Co., will not be surveyed on application of the company where it appears that said island is occupied as a burial ground by the Indians. 43–399

39. The return of the surveyor general as to the character of land constitutes but a small element of consideration when the question as to the character of the land is at issue. 45–25

40. When the character of land selected by a railroad company is put in issue, the burden is on the company to show by clear and convincing evidence that the land is of a character subject to the grant. 45–25

41. Land embraced within a railroad indemnity selection presented in accordance with departmental regulations and accepted and recognized by the local officers was not "undisposed land of the United States" within the meaning of the act of August 3, 1892, and did not fall within the grant to the State of Minnesota made by that act; and upon subsequent cancellation of such indemnity selection the grant did not attach thereto, but the land became public domain subject to disposition under appropriate laws. 46–7

42. Good administration requires that, under ordinary circumstances, each item of a railroad indemnity selection list shall be considered and disposed of as an independent selection, unaffected by facts shown in other items; but an exception will be made where, in a tendered list made up of several items, the aggregate area of the tracts severally designated as bases forms a sufficient base for the total acreage asked in exchange, even though individual items of the base so tendered may contain a larger or smaller acreage than the corresponding items of the tendered selection list. 46–280

IV. Mineral Land

43. The discovery of the mineral character of land within the primary limits of the grant made to the Southern Pacific Railroad Co. by the act of July 27, 1866, at any time before the issue of patent will defeat the grant. 41–264

44. Deposits of petroleum are mineral within the meaning of the act of July 27, 1866. 41–264

45. The mineral character of a tract of land within the primary limits of the grant to the Southern Pacific Railroad Co. is *prima facie* established by its classification as oil-bearing land; but the company is entitled, upon proper notice and showing, to a hearing to show error in the classification. 41–264

46. A deposit of shale suitable only for use in the manufacture of Portland cement does not warrant withholding the land containing it from disposition under a railroad grant. 43–325

47. To constitute land mineral within the meaning of the excepting clause to the grant to the Central Pacific Railway Co. it is not necessary that it be shown as a present fact to contain mineral in paying quantities, but if evidence of mineral is found thereon sufficient, in the opinion of prudent and qualified persons, to warrant further exploration and expenditure, with reasonable prospect of success, the land is mineral within the meaning of the act and not subject to selection thereunder. 43–545

48. When the character of land selected by the railway company is put in issue, the burden is on the company

to show by clear and convincing evidence that the land is of a character subject to the grant. 43–546

49. The requirement of the instructions of July 9, 1894, that notice of a selection by a railroad company of lands within a known mineral belt, or within 6 miles of a mining claim, shall be published for a period of 60 days, is discontinued; but prior to clear listing any such selection, the lands must be found, by examination in the field or by hearing, to be nonmineral within the meaning of the granting act. 43–476

50. Where settlement and entry were made of lands classified as mineral under the act of February 26, 1895, and included in the so-called "Garfield agreement," prior to notation upon the records of the local office of the direction of March 1, 1911, that further entries of such lands would not be permitted, and the lands so settled upon and entered were subsequently classified as nonmineral under the act of June 23, 1910, the rights of such entrymen are superior to the claim of the Northern Pacific Railway Co. under its grant; but upon relinquishment of any such entry, the land inures to the company. 44–73

51. To except lands from a railroad grant as mineral in character it is not necessary that a discovery of mineral be shown such as would serve as a basis for mineral patent; but it is sufficient if the land be shown to have a *prima facie* mineral character and a prospective value for mineral greater than any other known value. 45–25

52. Land upon which there is no present indication of mineral, nor any geological evidence that would warrant a mineral finding, should not be held mineral in character within the meaning of the excepting clause in the grant to the Southern Pacific Railroad Co. merely on the premise that future prospecting might disclose evidences of mineral. 45–327

53. In a proceeding against a railroad selection alleging the existence of mineral upon the land embraced therein, the company is not required to introduce its evidence in advance of a showing by the Government in support of the charges. 46–435

54. In expressly excluding mineral lands from the grant to the Northern Pacific Railroad Co. by the proviso to section 3 of the act of July 2, 1864, Congress contemplated that mineral lands, in the absence of special provisions to the contrary, should be considered as entireties or as a single estate; and the act of July 17, 1914, did not expressly or by implication modify or enlarge the provisions of the grant so as to permit of the selection of the surface of oil lands as indemnity. 48–573

55. Lands of the United States, within the limits of the grant to the Atlantic and Pacific Railroad Co., known to be valuable for their deposits of iron or coal are not subject to selection under the exchange provisions of the act of June 22, 1874, inasmuch as Congress did not contemplate that the exception of iron and coal contained in the proviso to section 3 of the granting act of July 27, 1866, should be extended thereto. 49–180

V. Northern Pacific Grant Lands (Act of July 1, 1898)

56. The rule of approximation is applicable to selections by the Northern Pacific Railway Co. under the act of July 1, 1898. 43–324

57. The Northern Pacific adjustment act of July 1, 1898, does not contemplate the relinquishment by the company of lands which have been sold or contracted to be sold by it; and while it may secure reconveyance of such lands with a view to adjustment under the act, it is not required to do so. 42–221

58. The Northern Pacific *Railway* Co. is the "successor in interest" to the Northern Pacific *Railroad* Co. within the meaning of the adjustment act of July 1, 1898; but a purchaser

from the *railway* company of lands granted to the *railroad* company is not a successor in interest within the meaning of that act and is not entitled to relinquish the purchased lands and select other lands in lieu thereof under its provisions. 42–464

59. The act of July 1, 1898, was designed to avert controversies involving conflicting claims of the Northern Pacific Railway Co. and settlers; and where the company was offered an opportunity to adjust a conflicting claim between it and a settler, and refused to do so, and the matter was thereupon taken into court by the settler and finally adjudicated in his favor, the company will not thereafter be recognized as having any right or claim to the land in controversy subject to adjustment under the act. 42–221

60. Purchasers of lands granted to the Northern Pacific Railroad Co. are not "lawful successors" within the meaning of that term as used in the adjustment act of July 1, 1898. 42–221

61. Settlements upon lands within the primary limits of the grant to the Northern Pacific Railway Co., made subsequent to approval but prior to the filing of the township plat, are not settlements in good faith upon unsurveyed lands within the meaning of the adjustment act of July 1, 1898. 43–324

62. The act of May 14, 1880, awarding a preference right of entry to successful contestants, contemplates that contestant may exercise such right by any form of appropriation which he may use in acquiring title to the land; and where a contestant procures the Northern Pacific Railway Co. to make for his benefit, within the preference-right period, a selection of the land under the act of July 1, 1898, such selection is a proper exercise of the preference right. 43–536

63. The Northern Pacific Railway Co. in waiving its claim to lands within the limits of its grant with a view to adjustment of the conflicting claims thereto under the provisions of the act of July 1, 1898, must relinquish its entire right and claim thereto; and there is no provision of law under which it is authorized to relinquish its claim to the surface of such lands merely and to retain and receive patent for the underlying coal deposits. 43–513

64. The Northern Pacific Railway Co. by acceptance of the act of July 1, 1898, bound itself to relinquish its claim to lands coming within the purview of its provisions, and can not by sale of the land after such acceptance defeat the right of a settler to have his claim adjusted under that act; and where land has been so sold by the company, and it declines to relinquish on that ground, suit should be instituted to compel relinquishment with a view to protection of the rights of the settler. 43–563

65. Departmental decision in Northern Pacific Ry. Co. *v.* Violette (36 L. D. 182), holding that the provision in the act of July 1, 1898, respecting relinquishments by the railway company in favor of settlements made upon unsurveyed lands after January 1, 1898, is not mandatory upon the company, but merely extends a privilege to the company to select other lands for such as it may relinquish, and thus protect settlements made at a time when it could not be reasonably ascertained whether they would fall upon odd or even numbered sections, reconsidered and adhered to. 43–433

66. Where settlement was made upon land within the primary limits of the grant to the Northern Pacific Railway Co. with the intention of purchasing from the company, but such purchase could not be consummated because the grant was forfeited by the act of September 29, 1890, the settler is entitled to relinquish the land so settled upon and select other land in lieu thereof under the provisions of the act of July 1, 1898. 44–505

67. It was the purpose of the act of July 1, 1898, to settle disputes between settlers and the Northern Pacific Railway Co. and prevent litigation; and where the company, instead of seeking adjustment under that act, litigates its claim to final judgment and loses the land, it is not entitled to select other land in lieu of that lost as a result of such litigation. 44–506

68. Under the act of July 1, 1898, a "proper relinquishment" of the land in dispute is essential to the right of selection; and where the company has litigated its claim to final judgment and lost the land, and therefore has nothing to relinquish, it is not entitled to select other land in lieu of that lost as a result of such litigation. 44–506

69. No settlement, residence, or improvement is required under a selection made under the act of July 1, 1898, based upon a settlement claim or entry in conflict with the Northern Pacific grant and adjusted under that act, where the person making the selection had fully complied with the requirements of the homestead law upon the land in conflict; and such selection will defeat a subsequent school indemnity selection of the same land by the State. 44–26

70. Where the conflicting claims of a settler and the Northern Pacific Railway Co. to a tract of land were finally adjudicated by the Land Department in favor of the settler and patent issued to him, prior to the act of July 1, 1898, and the company had prior to that date disposed of all its interest in the land, a suit in court on behalf of the purchaser, involving the conflicting claims to the land, pending at the date of the act, does not bring the case within the purview of the act and entitle the company to adjustment thereunder after final determination of the matter by the court in favor of the settler; but in such case the company is relegated to its ordinary right of indemnity to make up such loss. 44—449

71. The purpose of the act of July 1, 1898, was to settle disputes arising out of conflicting claims of settlers and the Northern Pacific Railway Co. to lands within the limit of the latter's grant, and one who long prior to the passage of the act had recognized the company's claim by procuring conveyance of the disputed tract therefrom for a valuable consideration, does not come within the purview of the said act. 47–161

72. One who abandons settlement on a tract in conflict with the Northern Pacific Railroad Co. under its grant, and thereafter exhausts his homestead right by perfecting an entry under the general provisions of the homestead laws, is not entitled to any adjustment under the provisions of the act of July 1, 1898. 47–161

73. The Northern Pacific Railway Co. is the legal successor of the Northern Pacific Railroad Co. with respect to the benefits of the grant of public lands made to the latter company. 50–539

VI. Patent

74. The reservation of rights of way for canals and ditches required by the act of August 30, 1890, to be inserted in patents for public lands west of the one hundredth meridian need not be inserted in patents issued for lands granted to railroad companies to which the grant or right of the company attached prior to the date of said act, but should be inserted in patents for lands covered by indemnity selections made by railroad companies, and in selections made by the Northern Pacific Railway Co. under the provisions of the act of July 1, 1898, in all cases where such indemnity or other selections are approved subsequent to August 30, 1890. 42–396

75. The Land Department can not undertake to determine whether the Southern Pacific Land Co. is the successor in interest to the land-grant rights of the Southern Pacific Railroad Co.; and in the absence of legislative or judicial recognition of the

land company as such successor in interest, patents under the grant to the railroad company will not issue to the land company. 42–522

76. Patent erroneously issued to the Southern Pacific Railroad Co. upon an indemnity selection of land within the conflicting limits of the grant made by the act of July 27, 1866, to the Atlantic & Pacific Railroad Co., and the branch line grant made by the act of March 3, 1871, to the Southern Pacific Railroad Co., and within the portion of the Atlantic & Pacific grant forfeited to the United States by the act of July 6, 1886, which land was not subject to such selection, is not void but voidable, and so long as the patent remains outstanding the Land Department is without jurisdiction to permit entry of the land. 43–208

77. Instructions of April 5, 1921, modifying instructions of March 8, 1900 (29 L. D. 589), as to issuance of patents for Central Pacific grant lands. 48–58

78. Instructions of April 28, 1924, Northern Pacific Railroad grant lands; suspension of patents. (Circular No. 931.) 50–399

VII. Coal Land

79. Administrative order of May 23, 1916, authorizing selection by and patenting to the Northern Pacific Railway Co. of lands withdrawn for coal classification. 45–152

80. Executive order of May 20, 1916, modifying certain coal-land withdrawals so as to permit the Northern Pacific Railway Co. to select and take patents for lands embraced therein. 45–151

81. The act of July 2, 1864, and the joint resolution of May 31, 1870, making a grant to the Northern Pacific Railroad Co., are in no wise amended or modified by the act of March 3, 1909, providing for the issuance of restricted patent to agricultural entrymen of lands subsequently classified, claimed, or reported as valuable for coal. 45–155

82. Coal lands are subject to indemnity selection by the Northern Pacific Railway Co. under the act of July 2, 1864, and the joint resolution of May 31, 1870, in lieu of nonmineral lands lost to the company's grant. 45–152

VIII. Indian Land

83. Upon the purchase by a railway company of lands within an Indian reservation, under the acts of March 3, 1909, and May 6, 1910, for reservoirs, material, ballast, or the planting of trees, a patent should be issued to the company for such lands, with a provision that the grant is made solely for the purpose of the use of the land as specified in the company's application to purchase, and that in event of abandonment of such use the land shall revert to the United States or its grantee. 45–177

84. Entries under the public land laws embracing lands applied for and patented to a railway company under said acts [Mar. 3, 1909, and May 6, 1910], and the patent issued thereon, should be noted as subject to the rights of the railway company under its application and patent, and similar notation should be made in the case of trust or fee patents upon Indian allotments embracing any such lands. 45–177

85. Lands in the Pyramid Lake Indian Reservation are excepted from the grant to the Central Pacific Railway Co. made by the acts of July 1, 1862, and July 2, 1864. 45–502

86. Instructions of March 26, 1925, relief to Indians on railroad grant lands in Arizona, California, and New Mexico. (Circular No. 987.) 51–79

87. The grant of July 2, 1864, to the Northern Pacific Railroad Co. operated to convey the fee to the lands within the former Mille Lac Indian Reservation, Minn., that were ceded to the United States by the treaty of March 11, 1863, all of the Indian claims to which were extinguished by the act of January 14, 1889. 49–391

RAILROAD LAND

See COAL LANDS, 48–443; INDIAN LANDS, 43–284; 45–17, 193, 322; MINERAL LANDS, 46–85, 435; NATIONAL FORESTS, 42–118; OREGON AND CALIFORNIA RAILROAD LANDS; RAILROAD GRANT; REPAYMENT, 45–452; RIGHT OF WAY, 43–78, 392, 410, 556; 46–407, 429; SELECTION, 48–172, 343; 49–303, 408, 540; SETTLEMENT, 45–92.

1. Circular of March 19, 1915, under act of February 25, 1915, for the relief of Wisconsin railroad settlers. 44–31

2. Instructions concerning Indian occupants of railroad lands in Arizona, California, and New Mexico. (Circular No. 533.) 46–44

3. Instructions of April 28, 1917, under act of February 27, 1917, regarding adjustment of conflicting claims to Northern Pacific lands in Washington. (Circular No. 548.) 46–98

4. Instructions of August 4, 1921, under administrative order of April 23, 1921, with reference to State, railroad, and lieu selections. 48–172

5. Instructions of February 20, 1923, exchange of Santa Fe Pacific Railroad lands in Mohave County, Ariz., act of August 24, 1922. 49–451

6. The rule of approximation is applicable to railroad indemnity selections. 46–279

7. In determining whether lands selected by the Santa Fe Pacific Railroad Co. in lieu of lands relinquished by it under the act of April 28, 1904, are "of equal quality" with the lands relinquished, the Land Department may accept the services of protestants who desire opportunity to disprove the allegation of the company that the relinquished and selected lands are of equal quality. 42–553

8. Lands within the conflicting primary limits of the Southern Pacific Railroad Co.'s branch line grant made by the act of March 3, 1871, the primary limits of the forfeited portion of the grant to the Atlantic & Pacific Railroad Co. made by the act of July 27, 1866, and also within the indemnity limits of the main line grant to the Southern Pacific Railroad Co. made by the act of July 27, 1866, are subject to indemnity selection by the Southern Pacific Co. for losses within its main line grant; and a pending indemnity selection of such lands by said company is a bar to the allowance of entry therefor. 43–159

9. Where lands selected by the St. Paul, Minneapolis & Manitoba Railway Co. in lieu of lands relinquished by it under the provisions of the act of August 5, 1892, had been prior to selection withdrawn from entry and have since been classified as coal, the selection may nevertheless be approved and passed to patent under the act of June 22, 1910, upon waiver by the company of all right to the coal deposits. 43–516

10. Section 5 of the act of March 3, 1887, according to persons who in good faith purchased from a railroad company lands subsequently found to be excepted from its grant the right to purchase such lands from the United States, does not require that persons claiming the benefits thereof shall be settlers upon the land; and it is not necessary that purchasers from the Oregon & California Railroad Co. applying to purchase under that section shall be settlers, the provisions in the act of April 10, 1869, that lands granted to said company shall be sold to actual settlers only, being waived as to them by the later act. 43–179

11. To entitle the Northern Pacific Railway Co. to make selection under the act of March 2, 1899 (30 Stat. 993), it must not only appear that the land is not of known mineral character at the date of the selection but it must have been returned as nonmineral at the date of actual Government survey; and a return by the surveyor that "mining operations are now being carried on to a great extent; mineral indications are found in nearly all parts of the township," does not constitute a nonmineral return, and

land so returned is not subject to selection under that act. 46–1

12. Selections by the Northern Pacific Railway Co. under the act of March 2, 1899 (30 Stat. 993), are limited to "nonmineral lands so classified as nonmineral at the time of the actual Government survey"; and where the surveyor reported that "there are many indications of the presence of mineral, gold, copper, and silver, though no veins have been located," the land, not being of the class named, is not subject to selection under that act, even though it be in fact nonmineral. 46–4

13. A regular 40-acre subdivision, as established by official survey, must be treated in land-grant or other public-land claims as an entirety as to its mineral or nonmineral classification, and an admission in an answer to a charge in a proceeding against a railroad selection, alleging the existence of mineral, that such a tract contains mineral, impresses the entire subdivision with that character. 49–250

14. A 40-acre tract or a fractional lot, being the smallest regular subdivision established by the Government survey, constitutes the unit of the public lands for the purpose of determining their classification under the agricultural or the mineral land laws. 49–250

15. An answer, which by its failure to deny, impliedly admits that a part of a regular 40-acre tract of public land, involved in a railroad selection, is mineral in character, must be held as an admission that the entire tract is mineral, and such conclusion thereafter leaves no issue requiring the submission of evidence at a hearing to prove that the tract is or is not of that character. 49–250

16. Where, in a proceeding against a railroad selection alleging the existence of mineral, all the evidence as to the character of the land relates only to that portion of the tract which is included within the limits of a lode location, the located area, if found to be mineral in character, should be separated by segregation survey, the remainder of the subdivision lotted, and the selection sustained against the charge to the extent of the nonmineral lands outside of the location. 49–303

17. A railroad selection filed pursuant to the act of April 28, 1904, for land in lieu of other land relinquished by the selector constitutes a contract which is, in theory of law, an immediate obligation the moment that the base land is relinquished at the request of the Secretary of the Interior, if the conditions of the statute are met, the validity of the selection to be determined in accordance with the conditions existing at the time it was made. 49–408

18. While the validity of a railroad selection filed under the act of April 28, 1904, is to be determined as of the date of the filing of the selection, if the conditions of the statute are met, yet the Secretary of the Interior is authorized, sufficient reasons being made to appear, to make subsequent inquiry directed to the ascertainment of whether or not the base and selected tracts were of known inequality at the date of selection. 49–408

19. A railroad selection filed under the act of April 28, 1904, for lands classified as coal lands and appraised at the minimum price at date of selection is valid if the base lands, relinquished at the request of the Secretary of the Interior, were classified and appraised as coal lands at the minimum price prior to date of selection, or, if not so classified and appraised, they were subsequently ascertained to be of quality at least equal to coal lands of the minimum price. 49–408

20. The filing of a railroad selection pursuant to the act of April 28, 1904, and in accordance with departmental regulations, when accepted by the local officers, effects a segregation of the land covered thereby, which, during its pendency, precludes the acquisition of

rights by a subsequent coal applicant, and a protestant against such selection is a mere protestant without interest. 49–408

21. The act of April 18, 1896, which restored to the public domain those lands formerly in the Fort Assinniboine Military Reservation, Mont., and made them subject to disposal under the laws specifically named therein, did not have the effect of reserving the lands from the operation of further legislation, and they became, therefore, upon the passage of the act of March 2, 1899, subject to selection by the Northern Pacific Railway Co. 49–540

22. A coal classification of lands selected under the act of April 28, 1904, and of the base lands relinquished by the selector, which fixes the price of the former greatly in excess of that of the latter, although one of price, is, nevertheless, in the absence of other facts indicative of the comparative quality of the tracts, a difference in quality, unaffected by the mere geographical situation of the respective tracts with reference to a completed line of railway. 49–522

23. A selection of unsurveyed land made under the act of August 5, 1892, which authorizes the selection of nonmineral public lands, so classified at the time of actual Government survey but which further expressly recognizes the privilege of selecting unsurveyed lands, nonmineral in fact, is not defeated by the mere observation of the surveyor that mineral indications are found in the township, especially where the selection has stood for a long time and any doubt implied from the surveyor's remarks has since been removed by close examination and the selected tract found to be nonmineral in fact. 50–583

24. A selection made by the Northern Pacific Railway Co. in accordance with the act of March 2, 1899, is a lawful filing excepted from the operation of the proclamation of May 23, 1905, which reserved certain lands for the Henrys Lake Forest Reserve. 51–642

25. Failure of a railroad company to file a new selection list within three months after the filing of the plat of survey, as required by the act of March 2, 1899, does not work a forfeiture of the selection, or constitute such noncompliance with the law as to remove it from the benefit of the proviso to the proclamation of May 23, 1905, in favor of lawful selections existing at its date. 51–642

RECLAMATION

See Accretion, 46–461; Arid Lands; Claims, 49–106; Indian Lands, 45–600; 48–468, 475; 49–370; Military Service, 46–174, 343, 383, 488; Oil, Gas, etc., Lands, 49–625; Right of Way, 47–224; 49–188; 50–388, 569; School Lands, 48–614; 49–611; Supervisory Authority of Secretary, 50–223, 438; Swamp Lands, 47–207.

I. Generally

1. Instructions of July 25, 1912, under act of April 30, 1912, concerning homesteads in reclamation projects. 41–115

2. General regulations of February 6, 1913, as amended to September 6, 1913. 42–349

3. Public notice of June 23, 1913, concerning collection of operation and maintenance charges. 42–201

4. Order of February 26, 1913, relating to operation and maintenance charges. 42–203

5. Instructions of November 14, 1914, amending paragraph 5 of the general circular of February 6, 1914. 43–447

6. Paragraph 38 of general circular of February 6, 1913, amended. 43–515

7. Circular of August 18, 1914, amending paragraph 41 of circular of February 6, 1913, relating to relinquishments of mortgaged land. 43–373

8. Paragraphs 19, 46, and 47 of general circular of February 6, 1913, amended, and paragraph 20 revoked. 43–509

9. Regulations approved May 18, 1916. 45–385

10. Paragraph 103 of General Reclamation Circular approved May 18, 1916, amended. 45–491

11. Instructions of July 26, 1916, under act of July 26, 1916, authorizing extension of payments under the reclamation act. 45–317

12. Regulations of October 4, 1917, suspending residence requirements on reclamation projects during war with Germany. 46–213

13. Leasing regulations. 46–108

14. Instructions of May 16, 1919, relative to payment of water-right charges by entrymen in military service. 47–167

15. Instructions of October 18, 1919, relative to reclamation extension act of August 13, 1914. 47–285

16. Instructions of May 7, 1920, as to claims for damages on projects. 47–392

17. Instructions of June 9, 1920, as to furnishing of water for miscellaneous uses. 47–404

18. Instructions of June 23, 1920, as to Government town sites on reclamation projects. 47–413

19. Instructions of July 1, 1920, amending paragraphs 41 and 76 of General Reclamation Circular. 47–417

20. Circular of June 18, 1921, amending paragraphs 13, 14, and 16 and revoking paragraph 15, of the General Reclamation Circular. (Circular No. 759.) 48–153

21. Instructions of April 23, 1922, reclamation projects; relief to water users under extension act of March 31, 1922. 48–618

22. Instructions of May 29, 1922, reclamation homesteads; desert land entries; proofs by incapacitated soldiers; act of April 7, 1922. (Circular No. 830.) 49–135

23. Instructions of July 8, 1922, reclamation homestead entries; when taxable. (Circular No. 838.) 49–168

24. Regulations of October 25, 1922, irrigation of arid lands in Nevada, acts of October 22, 1919, and September 22, 1922. (Circular No. 666, revised.) 49–328

25. Regulations of March 7, 1923, reclamation projects; relief to water users; acts of March 31, 1922, and February 28, 1923. 49–472

26. Instructions of March 26, 1923, public lands in State irrigation districts, act of May 15, 1922, section 3; Circular No. 592, amended. 49–498

27. Instructions of May 29, 1923, release of liens for water charges under Federal irrigation projects; act of May 15, 1922. 49–604

28. Regulations of June 2, 1924, reclamation projects; relief to water users under the extension act of May 9, 1924. 50–542

29. Instructions of December 9, 1924, Minnesota drainage laws; proceedings after expiration of period of redemption. (Circular No. 969.) 50–685

30. Instructions of April 1, 1925, Minnesota drainage laws; procedure after expiration of period of redemption; Circulars Nos. 470 and 969, amended. (Circular No. 989.) 51–83

31. Instructions of September 19, 1925, reclamation entries on Federal irrigation projects. 51–203

32. Regulations of September 12, 1925, reclamation entries on Federal irrigation projects. 51–204

33. Instructions of January 28, 1925, payment of construction and water charges on Federal irrigation projects. 51–207

34. Instructions of March 19, 1925, reclamation entries on Federal irrigation projects. 51–215

35. Instructions of March 19, 1925, reclamation entries on Federal irrigation projects. 51–218

36. Instructions of September 30, 1925, amendment of farm-unit plats; paragraph 43 of General Reclamation Circular, amended. 51–240

37. Instructions of August 20, 1926, adjustment of water-right charges on

Federal irrigation projects; sections 41–45, act of May 25, 1926. 51–525

38. The Reclamation Service can not, while construction of a project is in progress, and prior to the laying out of its canals, undertake to reexamine, at the instance of individual claimants, particular tracts falling within the project, to ascertain whether or not such tracts are capable of service from its projected canals. 42–8

39. The fact that remunerative crops may be raised without irrigation upon land lying within a reclamation project is not sufficient ground for exclusion of such land from the project; and final certificate should not issue upon an entry embracing such land until all the sums due the United States under the reclamation act, on account of land or water right at the time of issuance of the certificate, shall have been paid. 42–8

40. In case the actual cost of a reclamation project exceeds the estimated cost of construction, it is the duty of the Secretary of the Interior to revise the estimate and make the charges sufficient to reimburse the reclamation fund for the cost of construction. 43–210

41. The proviso to section 5 of the act of June 25, 1910, as amended by the act of February 18, 1911, and section 10 of the act of August 13, 1914, that "where entries made prior to June 25, 1910, have been or may be relinquished, in whole or in part, the lands so relinquished shall be subject to settlement and entry under the reclamation law," applies only to entries of record next previous to the passage of the act, and can not be invoked upon the basis of a relinquished entry preceding the entry of record at the date of the passage of the act. 45–504

42. The conditions imposed by the reclamation act as to reclamation, payment of charges, and filing of water-right application, are conditions not of homestead law or proof but arising out of reclamation and imposed as a further requirement. 46–61

43. Prior to the due establishment of farm units, and the conformation of the particular entry to an approved unit, proof of reclamation of the land embraced within a reclamation homestead entry under the act of June 17, 1902 (32 Stat. 388), will not be accepted. 46–417

44. Where a reclamation homestead entryman dies after he has offered satisfactory final proof, the entry becomes a part of the assets of his estate, and when duly sold as such by the administrator, the purchaser, if otherwise qualified, will be recognized as the assignee of the entryman under the act of June 23, 1910. 47–625

45. The grant of swamp and overflowed lands to the State of California by the act of September 28, 1850, has no application to lands ceded by the State to the Government for the purpose of aiding in the operations of irrigation and reclamation conducted by the Reclamation Service. 47–207

46. Under the act of June 25, 1910, as subsequently amended, lands reserved for irrigation purposes are not subject to settlement or entry until the Secretary of the Interior shall have established the unit of acreage per entry and announced that water is ready to be delivered, and no exception to the rule can be made in favor of an applicant who seeks to make an additional entry of such lands in the exercise of a preference right acquired by contest. 48–85

47. Section 5 of the act of June 27, 1906, authorizing an extension of time for compliance with law on desert entries within reclamation projects, applies only to entrymen who have been directly or indirectly delayed or prevented from carrying out their plans and works for obtaining a water supply by creation of a reclamation project. 41–377

48. A homestead entry, within a reclamation project, upon which the ordinary requirements of the homestead laws have been completed, is a property subject to mortgage which can not be defeated by acts of the

entryman or his assignee, and such entry can not be canceled upon contest in derogation of the right of the mortgagee to comply with the further provisions of the law looking to completion of title. 48–325

49. The proviso to section 10 of the act of August 13, 1914, which amended section 5 of the act of June 25, 1910, does not contemplate that lands entered prior to June 25, 1910, and relinquished subsequently to the creation of a second form reclamation withdrawal, shall be subject to entry before the establishment of farm units and announcement of the availability of water, except by one who had acquired an equity in the relinquished entry. 48–557

50. Where one who has entered into a contract to purchase privately owned lands, title remaining in the vendor, files water-right application and makes payments on account of the construction or building charge, and all rights of the vendee under the contract are reacquired by the vendor, the latter is entitled to receive credit for such payments and to complete the same upon showing proper qualifications to acquire and hold, notwithstanding that the transfer was the result of voluntary action instead of foreclosure proceeding; provided, however, that if the original vendor is not so qualified he must within two years from reacquisition of the land, dispose of such excess holding, as directed by paragraph 76 of the departmental regulations of May 18, 1916. 49–155

51. The provision of the act of March 31, 1922, which affords relief to settlers on reclamation projects with reference to operation and maintenance charges, simply relaxes the requirements of section 6 of the act of August 13, 1914, by permitting the Secretary of the Interior, in his discretion, to furnish irrigation water, during the time specified therein, to landowners or entrymen who are in arrears for more than one calendar year; and nothing contained therein authorizes the extension of time for the payment of such charges. 49–301

52. Where land within a reclamation homestead entry is included within a petroleum reserve prior to payment of the final commissions, the entryman must consent to take a restricted patent as provided by the act of July 17, 1914, or apply for a reclassification of the land, and, in the latter alternative, the showing as to its mineral character must be as of the date of the payment of the final commissions. 50–268

53. Where a farm unit which has been surveyed without segregation of a railroad right of way contains lands on both sides thereof, disposition of such unit under the reclamation homestead act will be made in accordance with the survey without any deduction from the purchase price as to diminution in area caused by the right of way, but the water charges will be based on the irrigable area only. 50–392

54. In the establishment of farm units in a reclamation project upon lands crossed by a railroad right of way, the units are generally confined to one side of the right of way, and no part thereof is included in the survey pursuant to which the lands are disposed of under the reclamation homestead act; but such rule is not invariable and may be modified to meet engineering or irrigation conditions. 50–392

55. Receipt for the payment of the final commissions at the date of the submission of proof of compliance with the ordinary provisions of the homestead law in connection with a reclamation homestead entry does not start the running of the confirmatory period in the proviso to section 7 of the act of March 3, 1891. 50–506

56. The commencement of the running of the confirmatory period in the proviso to section 7 of the act of March 3, 1891, in connection with a reclamation homestead entry is the date on which receipt issues for pay-

ment of the required final commissions, after the entryman has conformed his entry to a farm unit, shown reclamation of one-half of the irrigable area in such unit, assumed payment for a water right, made payment of all accrued water-right charges, and submitted proof of these facts. 50–506

57. The act of May 15, 1922, has no retroactive effect upon contracts theretofore made under proper authority, and such contracts are not, therefore, dependent for their validity upon the court confirmation specified in the proviso to that act. 50–143

58. The act of August 13, 1914, provided for the payment of irrigation construction charges upon a specified date, the only authority for change of which is contained in the act of May 15, 1922, and where the latter act is invoked to change the date of payment under a prior contract, the procedure prescribed therein must be followed in order to give validity to the amended contract. 50–143

59. Inasmuch as the acts of June 17, 1902, and August 13, 1914, did not peremptorily declare in mandatory language that forfeitures *must* be declared, or that they will necessarily result by operation of law as soon as defaults in payments by water users on reclamation projects have occurred, it rests within the sound discretion of the Secretary of the Interior to determine whether an entryman may thereafter be permitted to cure the default by payment of the charges. 50–224

60. Lands reconveyed to the United States by the State of New Mexico for reclamation purposes pursuant to the enabling act of June 20, 1910, which contains an indemnity provision as consideration for such transfers, occupy a status similar to that of withdrawn public lands, rather than that of lands acquired by purchase or condemnation, and the granting of permits to prospect for oil or gas upon such lands will be dependent upon the determination of whether or not their restoration will be detrimental to the project. 50–309

61. Lands acquired by purchase or condemnation pursuant to section 7 of the reclamation act, when no longer needed for reclamation purposes, can be disposed of only at public auction and the proceeds derived therefrom must be placed in the reclamation fund to the credit of the particular project; such lands and the oil and gas deposits therein are not subject to prospecting or lease under the act of February 25, 1920. 50–308

62. Public lands, withdrawn for a reservoir site, which can not be restored to the public domain without damage to the project, or which have, because of improvements placed thereon, become lands that may be sold only for the benefit of the reclamation fund, are not subject to the operation of the leasing act of February 25, 1920. 50–308

63. Except where specifically authorized by law, the Secretary of the Interior is not empowered to grant extensions of time, either directly or indirectly, for the payment of charges accruing from individual water users upon reclamation projects. 50–223

64. The Secretary of the Interior has no general statutory authority to suspend, even temporarily, public notices issued by him pursuant to section 4 of the act of June 17, 1902, of lands irrigable under reclamation projects, nor does he possess supervisory power to do so in the absence of a specific statute authorizing it. 50–223

65. The right of a veteran [under sec. 2, act of Feb. 21, 1925] to refund under the act of February 21, 1925, of charges paid by him on a reclamation homestead entry which he relinquishes prior to receipt of final certificate and within one year after the passage of the act is not defeated by action of the Government in canceling the entry, for sufficient reasons, independently of the relinquishment. 51–329

66. The provision of the reclamation law requiring payment by an entryman of all sums due the United States on account of the land or water right at the time of submission of proof as a condition precedent to the issuance of patent, is not satisfied by the assumption by an irrigation district of an obligation to pay the water right charges; nor does an extension of time accorded by the irrigation district for the payment of accrued charges operate as an extension by the Government unless approved by the latter. 51–608

II. Entry

67. Paragraph 4 of the regulations of February 6, 1913, as amended to September 6, 1913, modified. 42–462

68. Circular of April 29, 1915, under the act of March 4, 1915, for the relief of homestead entrymen under the reclamation act. 44–87

69. Regulations of May 3, 1915, under section 8 of the act of August 13, 1914, concerning reclamation and cultivation thereunder. 44–89

70. Circular of September 25, 1915, amending paragraphs 2 and 3 of circular of April 29, 1915, under the act of March 4, 1915, for the relief of homestead entrymen under the reclamation act. 44–377

71. Instructions of May 16, 1921, relative to additional reclamation entries; amending paragraph 23 and vacating paragraph 24, of the reclamation circular of May 18, 1916. (Circular No. 756.) 48–113

72. Where after entry of a farm unit within a reclamation project the farm-unit plat is amended and the entryman in conforming his entry to the amended plat retains only part of the land originally entered, he is entitled to have the payments theretofore made on account of building charges and on account of the Indian price for the land credited to the retained portion, but is not entitled to have the payments on account of operation and maintenance so credited. 41–389

73. The provision in section 5 of the reclamation act that failure to make payment of any two annual installments when due shall render the entry subject to cancellation, with forfeiture of all rights under the act, is not mandatory, but it rests in the sound discretion of the Secretary of the Interior whether the entryman in such case may thereafter be permitted to cure his default by payment of the water charges, where he has continued to comply with the provisions of the homestead law; and in event an entry has been canceled for such failure, the Secretary may, in the absence of adverse claim, authorize reinstatement thereof with a view to permitting the entryman to cure his default. 41–86

74. Settlement upon any portion of a farm unit entitles the settler to claim, by virtue of such settlement, only lands contained in that farm unit. 42–554

75. Lands platted to farm units can only be taken in accordance with the established units; and there can not be included in the same entry lands within a farm unit and other lands without. 42–554

76. The provisions of the three-year homestead act of June 6, 1912, respecting cultivation, have no application to entries made under the reclamation act; but the reclamation laws require, as a prerequisite to the issuance of final certificate and patent, that the entryman shall have reclaimed, for agricultural purposes, at least one-half of the total irrigable area of his entry and paid all reclamation charges at that time due. 42–534

77. The provisions of the three-year homestead law respecting cultivation do not apply to entries made subject to the reclamation act. 43–436

78. A homestead entry of a farm unit within a reclamation project, regardless of the area embraced therein, is the equivalent of a homestead entry for 160 acres outside of a project; but in fixing the area that should be charged against the entryman by rea-

son of such entry, under the provision in the act of August 30, 1890, that not more than 320 acres in the aggregate may be acquired by any one person under the agricultural public land laws, the reclamation entry should be taken into account at its actual area and not charged as 160 acres. 42–319

79. The provision in the act of February 18, 1911, that where entries made prior to June 25, 1910, embracing lands within a reclamation project, have been or may be relinquished, in whole or in part, the lands so relinquished shall be subject to settlement and entry under the homestead law as modified by the reclamation act, is applicable only to entries under the reclamation act, and can not be invoked as to entries canceled prior to the reclamation act or made before and afterwards canceled for fraud. 42–7

80. Under the proviso to section 5 of the act of June 25, 1910, as amended by the act of February 28, 1911, upon relinquishment of an entry made prior to June 25, 1910, within a reclamation withdrawal, the lands so relinquished became subject generally to settlement and entry under the homestead law, subject to the provisions of the reclamation act, and there is no authority for further limiting the right of entry of such lands. 42–462

81. The act of June 25, 1910, relieving entrymen within reclamation projects from the necessity of residence until water is available from the project applies to all bona fide qualified entrymen who made entry prior to the act and have made substantial improvements, regardless of whether they have established and maintained residence. 42–422

82. By virtue of the acts of June 25, 1910, and April 30, 1912, one who made entry of lands within a reclamation project prior to the act of June 25, 1910, and in good faith established residence, is not subject to contest for failure to maintain residence prior to the time water is available for irrigation of the land, provided residence is established and application for water right filed within 90 days after the issuance of public notice fixing the date when water will be available; and where an entrywoman marries after establishing residence, and removes to the unperfected homestead entry of her husband, she does not thereby forfeit the protection accorded by these acts, where after final proof upon her husband's claim she returns and reestablishes residence upon her own claim within the time fixed therefor. 42–528

83. A married woman, otherwise qualified, is competent to take an assignment of lands within a reclamation project under the act of June 23, 1910. 43–364

84. Where an entryman of lands within a reclamation project fails, after notice, to conform his entry to an established farm unit, the Secretary of the Interior has the power to so conform the entry. 43–210

85. An assignee under the act of June 23, 1910, of a homestead entry within a reclamation project, made under the provisions of the reclamation act, is not required to reside upon the land or in the vicinity thereof as a condition prerequisite to obtaining a patent and water right. 43–456

86. Where homestead or desert-land entries are included within first-form reclamation withdrawals they should not be suspended but allowed to proceed to final proof, certificate, and patent, and the land, if thereafter needed by the United States for reclamation purposes, reacquired by purchase or condemnation. 43–374

87. The residence requirements provided for in section 5 of the reclamation act of June 17, 1902, apply to all persons acquiring by assignment water-right contracts with the United States, unless prior to such assignment the final water-right certificate contemplated by section 1 of the act of August 9, 1912, has been issued, in which event the land may be freely

alienated, subject to the lien of the United States. 43–518

88. Directions given that the proper field office of the Reclamation Service be promptly advised, by the local land office of the district wherein the land lies, of the entryman's offer to submit final proof in such cases, and that in cases where through inadvertence of the local land office a filing has been accepted or entry erroneously allowed for lands previously withdrawn under the reclamation act, no final certificate or patent shall issue until the case has been referred to the Washington office of the Reclamation Commission for consideration and recommendation. 43–374

89. This homestead entry of lands within a reclamation withdrawal, allowed after the entryman had in good faith purchased the relinquishment of a prior entry for the same land under the proviso to section 5 of the act of June 25, 1910, as amended by the act of February 18, 1911, is permitted to remain intact, notwithstanding the prior entry had been canceled, though not noted as canceled upon the records of the local office, at the time the relinquishment was filed and the entry in question allowed, it appearing that the transaction was in entire good faith and neither the prior entryman, the present entryman, nor the local officers had actual knowledge of the cancellation at that time. 43–263

90. The rule that no application to enter shall be received until proper notation of the cancellation of a prior entry is made upon the records of the local office was adopted for administrative purposes and designed primarily for the protection of the rights of contestants, and will not be applied with the same strictness in cases solely between the Government and an entryman or an applicant for entry. 43–263

91. The act of February 18, 1911, applies to all entries embracing lands reserved for irrigation purposes made prior to June 25, 1910, which have been or may be relinquished, where the entrymen have been or may be, by reason of the provisions of the act of June 25, 1910, prohibiting entries for such lands until public notice of water charges, etc., has been issued, prevented from realizing the value of the improvements placed by them on their entries by selling such improvements to others desiring to make entry for the lands upon relinquishment of the existing entries therefor. 43–263

92. Upon the death of an entryman who has made satisfactory homestead final proof on a reclamation farm unit, the homestead becomes a part of his estate, and as such subject to distribution, and is not an unperfected entry subject to the provisions of section 2291, Revised Statutes. 46–61

93. Entry of lands within a reclamation project can be initiated by settlement. 46–113

94. In section 3 of the act of June 17, 1902 (the reclamation act), the word "only," in the proviso that "public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry only under the provisions of the homestead laws," applies to and qualifies the clause "under the provisions of the homestead law." 46–113

95. Lands subject to entry within reclamation projects are no exception to the rule of law that an outstanding preference right of entry of certain lands is not, of itself, a bar to settlement thereupon, the settlement being subject, however, to the preference right, if exercised. 46–188

96. School lands in private ownership as the result of purchase from the State are not subject to the penalty provided in section 9 of the act of August 13, 1914 (38 Stat. 686, 689). 46–400

97. The power of Congress to delegate to an agency of a State the authority to provide for the reclamation of public arid lands within a State irrigation district, and the right of such instrumentality to assess the lands for the cost of their reclamation,

can not be questioned by a mere applicant to make a desert-land entry. 50–521

III. Withdrawals

98. Instructions of August 24 and September 4, 1912, concerning contests affecting lands withdrawn under the reclamation act. 41–171, 241

99. Order of October 3, 1912, concerning settlement and improvements upon lands withdrawn under the reclamation act. 41–293

100. Instructions of June 12, 1914, governing restoration of lands withdrawn under the reclamation act. 43–274

101. Instructions of January 25, 1921, relative to first form withdrawals. (Circular No. 734.) 47–624

102. The act of February 18, 1911, providing that where entries covering lands withdrawn under the reclamation act, made prior to June 25, 1910, have been or may be relinquished in whole or in part, the lands so relinquished shall be subject to settlement and entry under the homestead law, as amended by the reclamation act, has no application where cancellation of the entry was the result of a contest, and not of a relinquishment. 41–67

103. The act of February 18, 1911, providing that upon relinquishment of an entry, made prior to June 25, 1910, for lands within a reclamation withdrawal, the lands so relinquished shall be subject to settlement and entry under the reclamation act, has reference only to lands covered by second-form withdrawals, and has no application to lands withdrawn under the first form. 41–68

104. Where a homestead entry covering lands within a reclamation withdrawal is conformed to a farm unit, the lands thereby uncovered are not relinquished within the meaning of the act of February 18, 1911, and are not subject to entry thereunder. 41–69

105. A successful contestant of an entry within a reclamation withdrawal is not barred of his preference right by section 5 of the act of June 25, 1910; but said section has the effect to postpone the exercise of such right until the project is so far completed that water can be applied to the land and the Secretary of the Interior has made public announcement of that fact. 41–286

106. A successful contestant in exercising his preference right of entry upon lands within a reclamation project is limited to one farm unit, although such unit may embrace less than the area covered by the entry he contested. 41–286

107. Where prior to the regulations of October 15, 1910, a contest was properly initiated, under then-existing laws and regulations, against an entry within a second-form withdrawal under the reclamation act, and the entry was canceled as a result of such contest, after the act of June 25, 1910, either prior or subsequent to October 15, 1910, the contestant thereby acquired a preference right of entry to the lands involved, notwithstanding the limitations contained in said act of June 25, 1910, as to entries thereafter allowed for lands within second-form withdrawals, and notwithstanding the said regulations of October 15, 1910, which preference right he is entitled to exercise upon the lands again becoming subject to entry; but contests heretofore dismissed under said regulations will not be reopened where third parties have acquired rights under such adjudications. 41–326

108. A withdrawal under the reclamation act will not bar the allowance of an application for right of way under the act of March 3, 1891, over the withdrawn lands, where the allowance of the application will not interfere with the use of the lands by the United States in connection with the administration of the reclamation act and where the water proposed to be conveyed over such right of way has

not been appropriated and is not claimed by the United States. 42–595

109. Where after the initiation of a contest against a homestead entry the lands are included within a first-form withdrawal under the reclamation act, but are subsequently relieved from the withdrawal and restored to entry, the contestant, upon the successful termination of the contest subsequent to the order of restoration, is entitled to exercise his preference right of entry for the land. 42–172

110. A successful contestant can not be permitted to make entry in exercise of his preference right while the lands he seeks to enter are embraced in a first-form withdrawal under the reclamation act; but under the regulations of August 24 and September 4, 1912, he may exercise that right at any time within 30 days from notice that the lands involved have been released from withdrawal and made subject to entry. 43–212

111. A mining claim as to which the claimant was in default in the performance of annual assessment work at the date of a withdrawal for the construction of irrigation works under the reclamation act does not except the land from the force and effect of the withdrawal. 44–580

112. Lands withdrawn for a reservoir site or similar reclamation purposes which are essential to the project, and lands acquired by purchase or condemnation for the exclusive use of the project, may be developed for their mineral resources only by temporary leases for periods not inconsistent with the needs of the project, and the proceeds therefrom must be placed in the reclamation fund to the credit of that project. 50–309

IV. Assignments

113. Assignments of homestead entries within reclamation projects under the act of June 23, 1910, may be made only to persons qualified to make entry under the general homestead laws, and subject to the limitations, charges, terms, and conditions of the reclamation act. 41–421

114. The wife of an entryman of lands within a reclamation project is not qualified to take an assignment of part of her husband's entry under the provisions of the act of June 23, 1910. 41–428

115. The reclamation act contemplates that one family shall acquire only one farm unit thereunder; and where an entry within a reclamation project is conformed to farm units, the wife of the entryman is not qualified to take an assignment under the act of June 23, 1910, of a portion of her husband's entry excluded from the farm unit retained by him. 41–422

116. Where, in conforming a homestead entry within a reclamation project to farm units, a legal subdivision thereof, not retained by the entryman, is, with other vacant land, embraced in a farm unit, the entryman can not thereafter, under the provisions of the act of June 23, 1910, assign such tract as a legal subdivision, for the reason that the legal subdivision, as such, no longer exists, having been merged in the farm unit; nor can he make assignment under that act of the farm unit into which such legal subdivision has been merged, for the reason that the farm unit includes land not embraced in his original entry. 41–422

117. The act of June 23, 1910, authorizing the assignment of parts of homestead entries within reclamation projects, has no application to entries which prior to that act had been adjusted to farm units and canceled as to the residue, after due notice; and an attempted assignment under that act of land so eliminated as residue is without authority of law and can not be recognized. 41–394

118. Where a homestead entry within a reclamation project was, after the submission of final proof, conformed to a farm unit and canceled on relinquishment as to the remainder, prior to the act of June 23, 1910, the

entry will not be reinstated as to the canceled portion for the purpose of permitting the entryman to assign such portion under the provisions of that act. 42–157

119. To entitle a corporation to take an assignment of a portion of a reclamation entry under the act of June 23, 1910, it must show that it is not claiming any other farm unit or entry under the reclamation act and that each of its stockholders is duly qualified to take an assignment under that act, notwithstanding the entryman from whom the corporation is seeking to take the assignment has complied with the provisions of the homestead law as to residence, improvement, and cultivation upon the land involved. 42–253

120. The Land Department has jurisdiction to determine the truth of a charge that an assignment of a homestead entry within a reclamation project, under the act of June 23, 1910, was obtained by fraud, and if found to have been so obtained, to annul the assignment. 44–199

121. The act of June 23, 1910, authorizing assignments of entries within reclamation projects, after the acceptance of final proof thereon, does not limit such assignments to legal subdivisions; and an entryman may thereunder assign his entry as a whole or "any part thereof." 44–219

122. The act of June 23, 1910, authorizing assignments of homestead entries within reclamation projects after the submission of satisfactory final proof, does not limit such assignments to citizens of the United States; and assignment under that act may be made and patent issued to an alien, the rights thereby acquired depending upon the statutes of the State respecting the rights of aliens to acquire and hold real property. 44–202

123. A settler on unsurveyed land in a school section, who, after survey and after withdrawal of the land under the reclamation act as susceptible of reclamation under an irrigation project, was permitted to make entry for the full area of 160 acres, must conform his entry to a farm unit, but is entitled under the provisions of the act of June 23, 1910, to assign the remaining portion of his entry; and the rights acquired by such settlement and entry bar the attachment of any rights to the land on behalf of the State under its school grant. 44–331

124. Where a desert-land entry within a reclamation project is assigned in part under the act of July 24, 1912, the entry should be subdivided into farm units as required by paragraphs 116 to 120 of the regulations of February 6, 1913; but where such an entry is assigned in its entirety the establishment of a farm unit is unnecessary. 44–386

125. The owner of a homestead entry under the reclamation act is not qualified to take by assignment another such entry. 46–227

126. A purchaser at sheriff's sale of the land embraced in a homestead entry within a reclamation project is an assignee of such entry under the act of June 23, 1910 (36 Stat. 592), if otherwise qualified, as of the date of the sheriff's sale, even though the land be eliminated from the project prior to delivery of the sheriff's deed. 46–370

127. Where, prior to an exchange of reclamation farm units under the act of March 4, 1915 (38 Stat. 1215), the entryman has, in connection with the original unit, fulfilled the ordinary homestead requirements and submitted proper proof thereof, the lieu farm unit may be assigned, under the act of June 23, 1910 (36 Stat. 592), subject to compliance with the requirements of the reclamation law as to payment, reclamation, and cultivation. 46–385

128. Minors are not qualified to take by assignment under the act of June 23, 1910, farm units upon which reclamation charges have not been paid in full. 45–22

129. The act of June 23, 1910, which authorizes the assignment of a reclamation homestead, does not require

that an assignee shall have the qualifications of a homesteader, nor does it contemplate that the assignment shall in any sense be considered as a "homestead entry," and consequently a transfer thereunder is not invalid for the reason that it embraces two incontiguous tracts. 48–295

130. The departmental regulations relating to an assignment of a homestead entry, within a reclamation project, contemplate that such assignment shall be submitted to the General Land Office for its acceptance or denial, and where a party chooses, with the view to effecting a transfer in derogation of law, to proceed contrary to the regulations, he must abide by the consequence of such attempted evasion when the transaction is brought to the attention of the Land Department by contest; and a breach of the law can not be excused on the ground that recognition of the transfer had not been sought. 48–325

131. An alien who has submitted five-year proof upon a reclamation homestead entry which is satisfactory except as to his citizenship qualifications may make a valid assignment of the entry under the act of June 23, 1910. 50–4

132. One who purchases a reclamation homestead entry at a mortgage foreclosure sale upon which satisfactory final five-year proof had previously been submitted is entitled to have the foreclosure deed treated as an assignment of the entry under the act of June 23, 1910. 50–4

133. The departmental rule that where a desert-land entry upon which final certificate had not issued is acquired by an assignee through mesne transfers, that assignee, if qualified, is entitled to hold the entry, although the intervening assignees were not qualified to take an assignment, is applicable prior to payment of final commissions to reclamation homestead entries upon which final proof of compliance with the ordinary requirements of the homestead law has been submitted and accepted. 50–268

134. The limitations imposed on assignments of reclamation homestead entries are limitations, not on the qualifications of the assignee, but on the right of the assignee to receive water. 50–268

V. Projects

135. Public notice of May 2, 1912, relating to Belle Fourche project. 41–2

136. Order of May 2, 1912, governing extension of time for payment on lands in Belle Fourche project. 41–6

137. Order of June 25, 1912, extending time for payment in Buford-Trenton project. 41–92

138. Order of July 13, 1912, extending time for payment in Fort Shaw unit, Sun River project. 41–102

139. Public notice of August 9, 1913, concerning Huntley project. 42–316

140. Public notice of November 3, 1914, concerning water service on second unit of Huntley project. 43–438

141. Instructions of November 3, 1914, governing settlement and entry on the second unit of Huntley project. 43–440

142. Public notice of March 23, 1914, concerning charges on Klamath project. 43–201

143. Public notice of May 28, 1913, concerning operation and maintenance charges on lower Yellowstone project. 42–174

144. Order of March 4, 1914, concerning payment on lower Yellowstone project. 43–162

145. Order of March 4, 1914, concerning withdrawn lands on Milk River project. 43–163

146. Order of March 11, 1914, concerning withdrawn lands on Milk River project. 43–164

147. Order of May 13, 1912, relating to South Side Pumping unit, Minidoka project. 41–15

148. Order of March 23, 1914, concerning charges on Minidoka project. 43–202

149. Order of March 31, 1914, concerning water service on Minidoka project. 43–215

150. Order of March 7, 1914, concerning payment on North Dakota pumping project (Williston and Buford-Trenton.) 43–166

151. Order of May 23, 1912, respecting deferred payments in North Platte project. 41–31

152. Public notice of June 24, 1912, relating to water service in North Platte project. 41–92

153. Public notice of March 11, 1913, concerning payment of installments on North Platte project. 41–631

154. Order of July 15, 1913, respecting additional charges on North Platte project. 42–223

155. Order of July 6, 1912, concerning water rights in Okanogan project. 41–99

156. Order of June 16, 1913, concerning water charges on Okanogan project. 42–189

157. Public notice of January 16, 1914, concerning payment on Okanogan project. 43–59

158. Order of July 17, 1912, relating to water service in Shoshone project. 41–114

159. Order of January 17, 1913, concerning payment of installments on Shoshone project. 41–474

160. Public notice of June 13, 1912, concerning water service in Truckee-Carson project. 41–88

161. Order of November 14, 1912, relating to payment in Truckee-Carson project. 41–433

162. Public notice of January 17, 1913, respecting building charge in Truckee-Carson project. 41–473

163. Public notice of April 17, 1913, respecting Umatilla project. 42–85

164. Order of June 25, 1912, extending time for payment in Williston project. 41–94

165. Public of March 11, 1913, respecting water service in Williston project. 41–632

166. Public notice of May 31, 1912, respecting Sunnyside unit, Yakima project. 41–73

167. Public notice of June 16, 1913, concerning water service on Sunnyside unit, Yakima project. 42–190

168. Public notice of October 2, 1913, concerning Sunnyside unit, Yakima project. 42–448

169. Order of March 10, 1914, relating to stock subscriptions, Sunnyside unit, Yakima project. 43–171

170. Public notice of April 11, 1914, concerning charges on Sunnyside unit, Yakima project. 43–218

171. Public notice of May 10, 1912, relating to Tieton unit, Yakima project. 41–14

172. Public notice of March 21, 1913, concerning payments on Tieton unit, Yakima project. 42–13

173. Public notice of April 25, 1913, concerning Tieton unit, Yakima project. 41–112

174. Public notice of June 16, 1913, respecting water service on Tieton unit, Yakima project. 42–185

175. Public notice of March 4, 1914, concerning payment on Tieton unit, Yakima project. 43–161

176. Order of March 6, 1913, extending time for payment of installment on Yuma project. 41–613

177. Public notice of October 3, 1919; first Mesa unit, Yuma auxiliary project, Arizona 47–273

178. Instructions of October 18, 1921; Yuma auxiliary project; citizenship. 48–235

179. Regulations concerning the Flathead irrigation project. 44–12

180. Instructions of May 6, 1919, entries of lands in Castle Peak irrigation project. (Circular No. 645.) 47–144

181. Instructions of May 6, 1919; Castle Peak irrigation project. (Circular No. 645.) 47–144

182. A homestead entry made under the act of April 23, 1904, as amended by the act of May 29, 1908, providing for entry of lands within the Flathead irrigation project in the former Flathead Indian Reservation, may be commuted under section 2301, Revised Statutes, upon payment of the appraised price of the land; but as an entryman under said acts is required, in addition to compliance with the

general homestead laws, to reclaim at least one-half of the total irrigable area of his entry for agricultural purposes, and to pay the water-right charges apportioned against the tract, final certificate should not issue until the land has been reclaimed and the charges apportioned and paid in accordance with the provisions of said acts. 41–521

183. State school lands sold in 1917 and 1918 do not fall within the language of the proviso to article 4 of the supplemental contract entered into by the Secretary of the Interior with the Belle Fourche Valley Water Users Association on January 24, 1911, as they are neither public lands entered nor private lands contracted prior thereto; and the purchasers from the State are accordingly bound by the construction charge in effect at the time water-right application is filed. 47–102

184. Section 2 of the act of January 25, 1917, which imposes the qualification of citizenship upon "any purchaser or patentee" of lands within the Yuma auxiliary project, Arizona, did not contemplate the restriction of the right of original entry or purchase to native born or to those who had theretofore become citizens, but the conditions of the statute as to citizenship are sufficiently met if, at the time of the issuance of patent, the patentee is a citizen of the United States. 48–235

VI. Water Rights

185. Instructions of July 1, 1914, under proviso to section 3, act of August 9, 1912, concerning water rights. 43–339

186. Public notice of September 24, 1914, under act of August 13, 1914, concerning water-right charges. 43–406

187. Instructions of December 20, 1915, under act of March 4, 1915, governing credit for water-right payments in cases of lieu selection under said act. 44–544

188. Instructions of September 26, 1916, concerning water-right applications by corporations not organized for profit. 45–541

189. Regulations of April 2, 1918, regarding payment of water-right charges by persons in military service. 46–343

190. Instructions of May 16, 1919, regarding payment of water-right charges by entrymen in military service. 47–167

191. Administrative order of April 23, 1920, canceling temporary water-right contracts made under act of August 10, 1917. 47–370

192. Under instructions of July 11, 1913, applications thereafter presented by corporations for water rights on reclamation projects will not be allowed, but applications pending at that date may be allowed. 42–253

193. The provision in forms for the water-right applications requiring payment by applicant of "betterment" or maintenance charges is a proper requirement under the reclamation laws, and the fact that at the time entry was made there was no specific mention of "betterment" charges in the water-right application forms then in use will not relieve the entryman from payment of betterment charges legally assessed against his land. 42–547

194. The provision in the form for water-right application by private landowner requiring him to bind himself not to convey the land voluntarily to any person not qualified under the reclamation law to purchase a water right, upon condition that the application and any "freehold interest" sought to be conveyed shall be subject to forfeiture, is a reasonable and proper requirement, and an application from which such provision has been eliminated will not be accepted. 42–547

195. The provision in the form of water-right application by private landowner requiring applicant to agree that the United States, or its successors, shall have full control over all ditches, gates, or other structures owned or controlled by applicant and

which are necessary for the delivery of water, is in accordance with departmental regulations, and being a necessary incident to the proper management and operation of the project by the United States or its successors, is impliedly authorized by the reclamation act, and a water-right applicant will be required to conform thereto. 42–547

196. The provision in the form for water-right application by private landowner requiring applicant to agree to grant and convey to the United States, or its successors, all necessary rights of way for ditches, canals, etc., for or in connection with the project, is a proper requirement, warranted by the spirit and intent of the reclamation act, and an applicant for water right will be required to conform thereto as a condition to allowance of his application. 42–547

197. The terms "water-right certificate" and "certificate," as used in section 1 of the act of August 9, 1912, providing for patents on reclamation entries, relate to final water-right certificates issued in connection with water rights for lands held in private ownership. 42–207

198. The proviso to section 1 of the act of August 9, 1912, requires "that no patent or certificate shall issue until all sums due the United States on account of such land or water right at the time of issuance of patent or certificate have been paid"; and in view of this specific provision there is no room for application of the doctrine of relation and holding payment of the charges due at the time of making final proof as meeting the requirements of the act. 42–207

199. Congress is without power to control or regulate the sale or acreage of lands in private ownership within reclamation projects, but, so long as the projects are under Government control, may determine the acreage for which water may be supplied through such projects to any one landowner. 42–542

200. Under the proviso to section 3 of the act of August 9, 1912, no person shall, at any one time, acquire or own a water right, or be furnished water on account of a water right acquired from the United States, in excess of such quantity as may be necessary for the proper irrigation of one farm unit, as fixed by the Secretary of the Interior, unless all installments contracted to be paid on the additional supply to be purchased shall first be paid in full, and the water right purchased for the lands in excess of one unit shall be limited to a supply sufficient for 160 acres. 42–542

201. The limitation in the proviso to section 3 of the act of August 9, 1912, as to the area of lands for which water right may be acquired or owned by any one person, has reference to irrigable lands only. 42–542

202. Under the reclamation laws the same person or association of persons can, prior to the time all building and betterment charges have been paid, hold but one farm unit of public land and acquire a water right therefor, unless the water rights for any additional lands, not to exceed 160 acres, have been paid for in full; or, if not owning or holding a farm unit of public land, may own, hold, and obtain water for not exceeding 160 acres of private land within the project, without first paying in full the installments contracted for with reference to the water rights; but can not at the same time hold and obtain water rights for both a farm unit of public land and a tract of privately owned land, unless the installments on water right, either for the farm unit or for the private lands, not exceeding 160 acres, have been paid in full. 42–543

203. Applications hereafter presented by corporations for water rights on reclamation projects will not be allowed; but existing corporations to which water rights have heretofore been granted should be permitted to continue without interference, and in

view of past departmental decisions, applications by corporations pending at this date may be allowed. 42–250

204. It is not optional with an entryman of lands within a reclamation project to take or refuse water service from the project; but he is compelled to take the water service and to pay the charges fixed therefor. 43–210

205. Where a water-right application for land held in private ownership has been canceled for default in payment of building, operation, and maintenance charges, such application may be reinstated upon full payment of all accrued charges. 45–23

206. The act of May 15, 1922, which authorized the Secretary of the Interior to enter into contracts with irrigation districts with respect to payments of water users' charges, did not modify the act of February 21, 1911, and existing contracts entered into under the latter act may stand as made or be modified under the same authority which authorized their execution; likewise, new contracts may be made thereunder without resort to the court proceedings specified for contracts under the former act. 50–142

207. Upon the issuance of public notices pursuant to section 4 of the reclamation act of June 17, 1902, the construction charges specified in the notices become fixed charges against the lands, and the acceptance and approval of water-right applications in a sense create a contractual relation between the applicants and the United States for the payment of the charges by the water users and the furnishing of irrigation water by the Government that can not be changed except with the consent of both parties. 50–223

RECORDS

See APPLICATION; EVIDENCE; INDIAN LANDS, 48–609; OFFICERS, 48–215; OIL, GAS, ETC., LANDS, 49–406, 613, 655; SCHOOL LANDS, 48–384.

1. Regulations of October 17, 1912, under act of August 24, 1912, concerning certified copies of records. 41–333

2. Instructions of November 29, 1912, relating to inspection of serial number registers in local offices. 41–358

3. Instructions of January 23, 1913, governing the furnishing of certified copies of records under the act of August 24, 1912. 41–475

4. Instructions of May 14, 1913, governing destruction of useless papers. 42–162

5. Circular of February 26, 1914, concerning certified copies of records by registers and receivers. 43–136

6. Order of July 14, 1915, concerning certified copies of homestead entry papers. 44–194

7. Instructions of August 4, 1915, governing the furnishing of copies and permitting inspection of the records of the Interior Department. 44–235

8. Instructions of August 4, 1915, governing the furnishing of copies and inspection of records, modified January 15, 1916. 44–515

9. Circular of January 28, 1916, amending circular of October 17, 1912, respecting the cost of certified copies of records and papers. 44–530

10. Cost of certified copies (Circular No. 504.) 45–485

11. Methods of keeping records and accounts relating to public lands. (Circular No. 616.) 46–513

12. Instructions of September 22, 1921, relative to requests for certified copies of records. (Circular No. 777.) 48–212

13. Instructions of September 12, 1922, cost of certified copies of records. (Circular No. 504, revised.) 49–274

14. Instructions of February 5, 1924, notations upon the records of local United States land offices of cancellations of entries, prospecting permits, leases, and selections, and notations of relinquishments and withdrawals of applications. (Circular No. 915.) 50–299

15. Instructions of April 23, 1924, notation of cancellation of oil and gas permits; Circular No. 915, modified. (Circular No. 929.) 50–387

16. Instructions of May 28, 1924, notation of cancellation of oil and gas permits; Circular No. 926, amended. (Circular No. 939.) 50–509

17. Instructions of November 13. 1924, notation of cancellation of oil and gas permits; Circulars Nos. 929 and 939, amended. (Circular No. 966.) 50–669

RECREATION LANDS

1. Instructions of July 23, 1926, acquisition or use of public lands by States, counties, or municipalities for recreational purposes. (Circular No. 1085.) 51–505

RED LAKE INDIAN LANDS

See INDIAN LANDS, 45–456; 46–442.

REGISTER AND RECEIVER

See LAND DEPARTMENT; OFFICERS; PRACTICE, 41–295.

1. Under the rules applicable to matters pending before the Commissioner of the General Land Office, registers and receivers have no authority to take action or to make any notation upon their records until specifically directed to do so by him, other than to file, note, and transmit such papers as may be filed in connection therewith, or to report at the proper time that no action has been taken, if that be the fact. 48–215

REHEARING

See PRACTICE, IX.

REINDEER

1. An act of the Territorial Legislature of Alaska imposing a tax upon each reindeer killed for market does not extend to reindeer held or controlled by the natives of that Territory. 51–155

2. The United States has such an ownership, reversionary or otherwise, in the reindeer held or controlled by the natives of Alaska, as to bring them within the inhibition of the act of August 24, 1912, which denies to the legislature of that Territory the power to impose a tax upon the property of the United States. 51–155

REINSTATEMENT

See APPLICATION; CONTEST, 42–325; 48–533; 49–514; REPAYMENT, 46–229; SCHOOL LANDS, 48–418; 49–436; SELECTION, 48–343.

1. Instructions of April 16, 1923, reinstatement of canceled entries; recognition of agents and attorneys; paragraph 8, regulations of April 20, 1907, amended. (Circular No. 889.) 49–535

2. The provision in the act of March 4, 1911, which precludes reinstatement of an entry where another "entry is of record covering such land," contemplates a valid pending entry. 42–244

3. Applications for reinstatement of canceled entries should be filed in the local land office of the district wherein the lands involved are situate. 42–456

4. A claimant is entitled to personal or constructive notice of the reinstatement of his canceled entry, which is not thereafter subject to contest upon a charge of abandonment until six months from receipt of notice. 46–172

5. To charge a claimant with constructive notice of the reinstatement of his canceled entry, upon his failure to call for the registered letter containing notice thereof, such letter must have remained in the post office of the claimant's record address, subject to call, during the entire 30-day period required, and then returned to the land office as uncalled for. 46–172

RELATION

See COAL LANDS, 50–343; HOMESTEAD, 48–165, 179, 350; 49–374, 440; OIL, GAS, ETC., LANDS, 48–108, 355; 49–249, 482; SCHOOL LANDS, 49–436; SETTLEMENT, 50–369.

1. The proviso to section 1 of the act of August 9, 1912, requires "that no patent or certificate shall issue until

all sums due the United States on account of such land or water right at the time of issuance of patent or certificate have been paid"; and in view of this specific provision there is no room for application of the doctrine of relation and holding payment of the charges due at the time of making final proof as meeting the requirements of the act. 42–207

RELINQUISHMENT

See CONTEST, 42–117, 325; 46–372; 48–365; CONTESTANT, 45–548; DESERT LANDS, 43–341, 357; 46–256; 48–26; HOMESTEAD, 42–488; 47–278; 48–137, 274, 317, 557; 49–169; INDIAN LANDS, 46–490; INSANITY, 43–56; MORTGAGE, 50–431; OIL, GAS, ETC., LANDS, 48–543; 50–546; PRACTICE, 48–582; RECLAMATION, 42–7, 157, 462; 43–373; 45–504; RECORDS, 50–299; REPAYMENT, 42–28; 43–147, 234, 292.

1. Instructions of March 31, 1922; relinquishment of incumbered lands; notice to mortgagee. (Circular No. 819.) 48–613

2. Instructions of April 12, 1922; effect of relinquishment filed in support of application for repayment; Circular No. 513, obsolete. (Circular No. 820.) 48–629

3. Relinquishment of a homestead entry as to a part of a 40-acre legal subdivision, on the ground that it is mineral in character, will not be accepted unless the mineral character of the tract sought to be relinquished is shown to have been established in accordance with the requirements of paragraph (c) of section 37 of the general mining regulations of March 29, 1909. 41–132

4. One who files an application to enter, relying upon a relinquishment filed concurrently therewith but executed 16 months before by a former entryman for the same land, and without having made any inquiry at the local office of the land district in which the land is located to ascertain whether any contest was pending against such entry, does not thereby acquire any such right as will defeat the right of the contestant under an intervening well-founded contest filed in good faith, notwithstanding the relinquishment was in no wise the result of the contest. 41–606

5. An affidavit of contest has no effect until filed in the local office; and where left with the officer before whom it was executed, to be transmitted to the local office for filing, and such officer files in that office simultaneously the affidavit of contest, a relinquishment of the contested entry, and an application to enter the land, the relinquishment and application take precedence, notwithstanding they were executed subsequently to the affidavit of contest. 42–117

6. One who acts as agent in negotiating the sale of the relinquishment of an entry is in privity with the entryman and the purchaser, within the meaning of the regulations of September 15, 1910, providing that at a hearing between a contestant claiming a preference right and an intervening applicant for the land "it shall be competent for the contestant to show that the former entryman, or some one in privity with him in the sale or purchase of the relinquishment, had knowledge of the filing of the affidavit of contest, in rebuttal of any showing made by the applicant." 42–250

7. The purchase of the relinquishment of an unperfected homestead entry does not invest the purchaser with any rights appertaining to the entry while it remains of record or with any rights to the lands involved after the entry is canceled upon the filing of the relinquishment. 43–347

8. Where the question arises, after a relinquishment of a homestead entry is filed subsequently to the initiation of a contest, as to which of two applicants is entitled to enter the land, one basing his claim upon the contest, the other upon the filing of the relinquishment, the presumption will obtain that the contest induced the relinquish-

ment, and the contestant will be recognized as entitled to a preference right which can only be avoided on a showing that the contest charge was not true, or that the contestant is not a qualified applicant, or that the land is not subject to his application.
48–365

9. A relinquishment of an entry is not required to be acknowledged, and there is no Federal statute establishing the fee for such an acknowledgment; but in case a relinquishment is acknowledged, the maximum charge therefor should be the same as the fee fixed by the statutes of the State for taking the acknowledgment to a deed.
42–196

10. A charge of abandonment against a homestead entry is established by proof of the sale of a relinquishment of the entry. 42–250

11. A homestead entryman who executes a relinquishment and places it in the hands of another, who disposes of it for a valuable consideration in excess of the filing fees, is disqualified to make second entry under the act of February 3, 1911, regardless of whether he actually received any part of the consideration for which it was sold. 42–78

12. The second homestead acts of April 28, 1904, February 8, 1908, and February 3, 1911, deny the right of second homestead entry to one who relinquished his former entry for a consideration in excess of the filing fees, but the second homestead act of June 5, 1900, contains no such limitation; and one who after relinquishment of a former entry made settlement prior to the act of June 5, 1900, and has continued to reside upon the land, is entitled, if otherwise qualified, to make second entry under that act, notwithstanding he may have received for his relinquishment a consideration in excess of the filing fees.
42–487

13. Where a homestead entryman executes and delivers to another a relinquishment of his entry, with a view to deserting and dispossessing his wife, who is domiciled upon the land, the wife, upon the filing of the relinquishment, is entitled to make entry of the land in her own behalf as the deserted wife of the entryman, with credit for residence from the date of her settlement thereon with her husband.
42–507

14. The Land Department has authority to try a charge of fraud in the procurement of a relinquishment and to reinstate the entry if the relinquishment be found to have been fraudulently obtained. 44–199

15. Proof of a contract by an entryman to relinquish a portion of his entry in favor of a prior settlement claim, not in writing but resting only in parol, should not be accepted after the entryman is dead and can make no defense. 45–466

16. Unless coming within the provisions of the act of October 22, 1914, the wife of a homestead entryman takes nothing by the final certificate which issues on the husband's entry. He may thereafter demand patent in his own name; sell the land and make good equitable title to it without the wife's consent, or relinquish the perfected claim to the Government.
47–401

17. While under the provisions of the act of June 16, 1880, a relinquishment of all claims under the entry is required as a basis for repayment, it is not contemplated, in a case where chancery deed issued pursuant to a decree of court, that the patentee should thereafter surrender his patent upon which such deed is based or attempt a reconveyance to the United States, in order to avail himself of the benefit of said statute. 47–49

18. The purchase of a relinquishment together with the improvements of one who had made an unrestricted homestead entry does not vest in the purchaser any rights that will interfere with the allowance of an oil and gas prospecting permit under section 13 of the act of February 25, 1920,

pursuant to an application that was pending when the relinquishment was executed. 49–186

19. A purchaser of a relinquishment executed during the pendency of an oil and gas prospecting permit application by one who had made an unrestricted homestead entry will be allowed to make a surface homestead entry only, and then only upon his consenting to the use by the permittee of so much of the surface of the land without compensation to the nonmineral entryman as shall be needed in extracting and removing the mineral deposits. 49–186

20. A letter written by a homestead entryman to a United States land office containing the statement, "I wish to relinquish all my claims on the land," is not sufficiently definite in its terms to indicate a present intention to relinquish the particular lands embraced in the entry. 50–165

21. A relinquishment of a homestead entry which, except for the relinquishment, would have been confirmed under the proviso to section 7 of the act of March 3, 1891, estops the entryman from obtaining the benefits of the exchange of entry provision of the act of January 27, 1922, notwithstanding that the relinquishment was induced by adverse proceedings by the Government, instituted in accordance with the then existing practice, afterwards held to be unauthorized. 50–172

22. A voluntary relinquishment, executed and filed in connection with a claim for repayment of purchase money paid upon a canceled entry which, except for the relinquishment and refund of purchase price, would have been entitled to confirmation under the act of March 3, 1891, amounts to a quitclaim, for a valuable consideration, of all the entryman's right, title, and interest in and to the lands embraced therein, and precludes him from afterwards invoking the benefits of the exchange-of-entry provision of the act of January 27, 1922. 50–187

23. A relinquishment of an oil and gas prospecting permit does not, of its own force, relieve the lands from the segregative effect created by the permit, and the filing of an application for a permit, predicated upon the relinquishment, prior to the cancellation of the permit by the Commissioner of the General Land Office and notation thereof upon the records of the local land office, does not confer upon the applicant any right to notice of the disposition of the prior existing claim or entitle him to any preference in the allowance of his application when the lands are formally restored. 50–202

24. A contract or agreement to relinquish or convey made after an application to make entry under the public land laws had been filed, but which was rescinded prior to official action upon the application, does not disqualify the applicant to make entry thereunder. 51–247

REPAYMENT

See RELINQUISHMENT, 41–63; 48–629; RIGHT OF WAY, 49–188; SURVEY, 49–583.

I. Generally

1. Instructions given that claims for repayment under section 2 of the act of March 3, 1885, of installments paid on Umatilla lands, shall not be allowed until the land shall have been reentered and the payments therefor made in full. 44–3

2. Instructions of October 25, 1916 (Circular No. 513.) 45–520

3. Instructions of November 13, 1920, act of December 11, 1919. (Circular No. 728.) 47–594

4. Upon rejection of a desert-land application the money paid therewith should not be covered into the Treasury, but should be returned to the applicant. 42–397

5. Where a properly-allowed homestead entry is canceled upon voluntary relinquishment, neither the act of June 16, 1880, nor the act of March

26, 1908, authorizes repayment of the moneys paid in connection therewith. 41–63

6. A homestead entryman who was required to pay for the area embraced in his entry in excess of 160 acres, and was thereafter permitted to change his entry, under section 2372, Revised Statutes, to embrace other land aggregating only 160 acres, is not entitled to repayment of the amount paid by him for the excess acreage embraced in his original entry. 41–515

7. No right to recover purchase moneys and commissions under the repayment statutes can be recognized in an assignee of a canceled entry where the purported transfer of the land occurred after the cancellation of the entry became effective. 51–66

8. Where an applicant for patent for a mining claim, after due notice that charges have been filed by an officer of the Government affecting the validity of the claim, fails to make any denial of the charges or to apply for a hearing, and the application is thereupon rejected, he is not entitled, in the absence of a showing that the default and judgment were taken as the result of mistake, surprise, or excusable neglect on his part, to repayment of the purchase moneys paid in connection with the application for patent. 41–288

9. Where a homestead entry was allowed subject to the provisions of the act of June 22, 1910, contrary to the purpose of the applicant, who filed an ordinary homestead application with the intention to secure the land free from restriction, and the entryman, rather than take the land subject to the conditions imposed by that act, relinquished the entry, he is entitled to repayment of the fees and commissions paid by him in connection with the entry. 41–414

10. Abandonment of land entered and relinquishment of the entry rather than accept a lesser estate (a surface patent) therein than entryman undertook to acquire is not a voluntary abandonment, and the purchase money paid may be recovered under the repayment laws. 46–251

11. Where land entered under the desert-land laws is subsequently included within a coal-land withdrawal, the entryman has the right to elect either to take a limited estate or to apply for repayment. 48–292

12. A desert-land entryman who, having made entry prior to the inclusion of the land within a coal withdrawal, subsequently relinquishes a portion of the entry and elects to take a surface patent for the balance and then relinquishes the latter tract, must be held to have voluntarily abandoned the entry and, therefore, not to be entitled to repayment. 48–292

13. The allowance of an entry for land subsequently included within a coal withdrawal is not an erroneous allowance within the purview of the repayment act of June 16, 1880, notwithstanding that at the time of its abandonment by the entryman there existed no law under which it could have been confirmed as to a surface patent. 50–418

14. An allowance of a desert-land entry for land withdrawn from entry under the coal land laws only is not erroneous, and its cancellation for failure of the entryman to submit proof rather than to prove the noncoal character of the land is not a ground for repayment under the act of June 16, 1880. 50–429

15. Money paid to the receiver in connection with a timber and stone sworn statement should be deposited, under paragraph 46 of the instructions of June 10, 1908, to the receiver's official account, and so held until earned by submission of satisfactory proof or returned to the claimant, and should not be covered into the Treasury of the United States until due and payable under the law; and where money so deposited with the receiver is erroneously covered into the Treasury before it is earned, and the timber and stone claim is not consummated,

an assignee of the timber and stone claimant is not entitled, in view of the provisions of section 3477 of the Revised Statutes, prohibiting the transfer and assignment of claims against the United States, to repayment of the money so paid into the Treasury. 42–181

16. Where the record in a Government proceeding against a timber and stone sworn statement fairly shows fraud or attempted fraud in connection with the application for entry, and the applicant files his relinquishment and makes application for repayment, without any attempt to disprove or overcome the charges and showing against him, such action on his part is held to be an admission of the matters charged and shown by the record, and his application for repayment will be rejected, without prejudice to his right to file application for a rehearing, if he so desires, supported by a showing upon the matter of fraud or attempted fraud in connection with his sworn statement. 42–28

17. The fees and commissions prescribed by law for homestead entries are properly chargeable upon soldiers' additional entries under sections 2306 and 2307 of the Revised Statutes; and entrymen under those sections are not entitled to repayment of the fees and commissions paid by them on the ground that such fees and commissions are not required by law. 43–72

18. Where by mistake homestead entry was made for the wrong land, and the entryman, after applying for amendment but without waiting for final action upon his application, voluntarily relinquished the entry and made second entry for the land desired, he is not entitled to repayment of the fees, commissions and excess purchase money paid in connection with the first entry. 43–147

19. A mortgagee under a mortgage which is merely a lien on the land is not entitled, under either the act of June 16, 1880, or the act of March 26, 1908, to repayment of the moneys paid by the entryman. 43–335

20. Where the purchaser of coal lands paid the appraised value thereof as required by departmental regulations, he is not entitled to repayment of any excess paid by him over and above the minimum price fixed by section 2347, Revised Statutes. 44–583

21. Where the purchaser of lands under the timber and stone act of June 3, 1878, paid the appraised value thereof, as required by departmental regulations, he is not entitled to repayment of any excess paid by him over and above the minimum price fixed by that act. 44–585

22. Where the purchaser of an isolated tract at public sale under the act of June 27, 1906, paid the appraised value thereof, as required by departmental regulations, he is not entitled to repayment of any excess over and above the minimum price of $1.25 per acre fixed by that act. 44–588

23. Where a homestead entry of Umatilla Indian lands, under the act of March 3, 1885, is canceled for failure to comply with law, after payment of the first installment of the purchase money, the entryman is not entitled to repayment of such installment under the act of March 26, 1908, his only right to repayment, if any, being under the provisions of section 2 of said act of March 3, 1885. 44–3

24. The assignment of a desert-land entry carries with it all rights to repayment of moneys paid in connection with the entry. 43–477

25. Where repayment of moneys paid in connection with a rejected timber and stone application was denied, in accordance with the rule then in force, on the ground of fraud in connection with the application, the fact that such rule was subsequently changed will not justify reconsideration of the case with a view to allowance of repayment. 44–113

26. Where the commissioner denied repayment in a number of like cases,

from which action some of the parties appealed and some did not, and the Secretary of the Interior affirmed the commissioner in the appealed cases, all the cases, whether appealed or not, are in the same situation, and the claims involved are equally *res adjudicata* within the departmental decision in the case of Thomas Hall, 44 L. D. 113, holding that where repayment of moneys paid in connection with a rejected timber and stone application was denied, in accordance with the rule then in force, on the ground of fraud in connection with the application, the fact that such rule was subsequently changed will not justify reconsideration of the case with a view to allowance of repayment. 44–486

27. Claims for moneys deposited by individuals to cover the cost of surveys in accordance with the provisions of sections 2401 and 2402, Revised Statutes, are not subject to assignment, and the depositors only are entitled to any repayment of moneys so deposited. 45–29

28. Where at the time of commutation of a homestead entry of lands within the primary limits of the grant to the Atlantic and Pacific Railroad Co. made by act of July 27, 1866, the land was properly rated at $2.50 per acre, under section 2357, Revised Statutes, and payment was made at that price, the entryman is not entitled to repayment, as excess, of any portion of the amount paid, because of the fact that the price of such lands was subsequently, by the act of July 16, 1886, reduced to $1.25, that act having no retroactive effect. 45–452

29. The price of lands in an odd-numbered section within the limits of a railroad grant, but excepted therefrom, is $1.25 per acre; and where a purchaser thereof has been required to pay a higher price, he is entitled to the repayment of such excess. 47–258

30. As no map of definite location was ever filed in the matter of the contemplated branch line of the Northern Pacific Railway Co. from Wallula Junction, Wash., to Portland, Oreg., there was no grant, hence no alternate reserved sections. The price of lands in the even-numbered sections in the area involved, therefore, was $1.25 per acre; and where a purchaser thereof has been required to pay a higher price, he is entitled to the repayment of such excess. 47–628

31. A claim for repayment of the amount in excess of lawful requirements charged for lands entered under the preemption or homestead laws, erroneously classified as double minimum, and for which payment was made by certificates of deposit to cover costs of surveys, issued under and governed by sections 2401, 2402, and 2403, Revised Statutes, is allowable under the act of March 26, 1908. 48–341

32. Congress intended by the proviso to the forfeiture act of February 28, 1885, to fix the future price of all lands in the forfeited Texas and Pacific Railroad Co. grant at $2.50 per acre, and one who thereafter, and prior to the passage of the general act of March 2, 1889, which fixed the price of lands within forfeited railroad grants at $1.25 per acre, made a desert-land entry of lands within the limits of the withdrawal based upon the map filed by the company of its general route, and paid the double minimum price therefor, did not make payment in excess of lawful requirements and has no ground for a claim of repayment. 49–173

33. Repayment may be properly made under the last clause of section 2 of the act of June 16, 1880, to one who paid double minimum excess upon an entry within the limits of a withdrawal on general route when it is determined upon the filing of the map of definite location that the lands entered are not within the railroad grant. 49–541

34. Allowance of a desert-land entry under the act of March 3, 1877, for lands within the primary limits of a railroad grant, upon original payment

of 25 cents per acre, was not erroneous, and, where, during its existence it could have been completed at the rate of $1.25 per acre under regulations then in force, it was subject to confirmation within the meaning of the repayment act; and even under subsequent regulations to meet a new interpretation of the law, such an entry, if then existing, could have been completed upon payment of the unpaid portion of the legal price; hence, under either view, a proper case for repayment is not presented. 50–161

35. A desert-land entryman who was required to make an initial payment of 50 cents per acre for land within the reserved limits of a railroad grant is not entitled to repayment under the repayment statutes on the ground that the desert-land act of March 3, 1877, fixed the initial price of 25 cents per acre for all desert-land entries. 50–416

36. The impossibility of effecting reclamation of the land embraced in a desert-land entry is not, of itself, ground for repayment. 46–71

37. Where a desert entry is canceled in the erroneous belief that first-year proof had not been submitted, and upon discovery of the error two years later the entryman is called upon to submit second and third year proof as a condition to reinstatement of the entry, but takes no action, repayment of the purchase money will be allowed. 46–229

38. Upon reduction of the area of a homestead entry of Fort Peck Indian lands, by relinquishment of a part thereof, there is no authority of law under which an installment of the purchase money paid for such lands may be returned, but such installment may be credited to the unpaid portion of the purchase price. 46–282

39. Upon reclassification and reappraisal of former Indian lands the entryman is entitled to repayment of the difference between the amount paid and the price fixed by reappraisal, although during the pendency of his application for reclassification and reappraisal a patent for the land has issued. 46–375

40. Where an application for repayment under the act of June 16, 1880, was properly denied under the rule then in force, and a later application is filed at a time when action in the Court of Claims is barred under section 1069, Revised Statutes, the former adjudication will not be disturbed. 46–433

41. The Land Department is without authority to allow repayment under the act of June 16, 1880, of a demand against the Government which is not embraced within its provisions merely because it might be recoverable under a different law before a tribunal with a different jurisdiction. 51–35

42. While under the provisions of the act of June 16, 1880, a relinquishment of all claims under the entry is required as a basis for repayment, it is not contemplated, in a case where chancery deed issued pursuant to a decree of court, that the patentee should thereafter surrender his patent upon which such deed is based or attempt a reconveyance to the United States, in order to avail himself of the benefit of said statute. 47–49

43. The forfeiture clause, as contained in section 9 of the act of May 30, 1908, is a complete bar to repayment of moneys paid for Fort Peck Indian lands entered pursuant to section 8 of that act and subsequently relinquished, except as to that class of irrigable lands specified in section 2 of said act. 48–14

44. The repayment provision contained in paragraph 6, section 2, is a limitation upon the general forfeiture clause of section 9 of the act of May 30, 1908, and pertains exclusively to such entered lands as are found to be irrigable by any system constructed pursuant to said act and that are thereafter resold. 48–14

45. An application for repayment based upon abandonment and relin-

quishment of a desert-land entry after the inclusion of the land in a coal withdrawal, on the ground that the entryman did not desire to accept a limited or surface patent, must be denied where he reentered the land subject to a reservation of the coal contents to the United States, inasmuch as such action does not amount to an abandonment, but merely a voluntary relinquishment of the first entry. 48–291

46. The Land Department can not sanction an improper and unauthorized repayment merely because it, through lack of knowledge or by oversight, erroneously allowed a similar application under kindred facts. 48–291

47. The act of February 25, 1920, made no provision for forfeiture of moneys paid in connection with prospecting permit applications, nor did it directly or indirectly repeal or modify any provisions of the general repayment statutes then in force and effect. 49–344

48. The word "earned" as used in paragraph 31 of the oil and gas regulations, approved March 11, 1920, is not to be construed as barring the right to repayment under the general repayment laws, of fees and commissions paid in connection with applications for oil and gas prospecting permits under the act of February 25, 1920. 49–344

49. The special repayment provision in section 2 of the act of March 3, 1885, is applicable to reimbursement of full as well as partial payment made by a purchaser of Umatilla Indian lands after failure to obtain title because of inability to fulfill other requirements of the act, if the land has been resold and the purchase price paid by the subsequent purchaser. 49–479

50. All claims for repayment which come within the purview of the act of December 11, 1919, are subject to the two-year limitation therein contained, notwithstanding that they may have been presentable under the act of June 16, 1880, which did not contain that limitation. 51–333

51. The proviso to section 1 of the act of December 11, 1919, which prescribed that applications for repayment of purchase moneys and commissions paid in connection with rejected public-land entries must be filed within two years from the passage of the act or from the date of rejection, is applicable to the various heirs or distributees of a deceased entryman individually, and the filing of an application by one heir or distributee within the required time does not stay the running of the statute as against the others. 49–533

52. The limitation contained in the proviso to section 2 of the act of December 11, 1919, is applicable to claims for repayment under the last clause of section 2 of the act of June 16, 1880. 49–541

53. An application for the repayment of moneys paid in excess of lawful requirement filed by one of the heirs of a deceased entryman on behalf of all of the heirs prior to the expiration of the two-year limitation contained in the act of December 11, 1919, is sufficient to stop the running of the statute as to the share of each heir, and the subsequent filing of separate applications on behalf of the heirs individually after the expiration of the two-year period will not be deemed a cause for its denial. 49–652

54. The limitation in the act of December 11, 1919, fixing the time within which applications for repayment shall be filed, begins to run, in cases involving a railroad indemnity selection list, from the date of the rejection of each item thereof in so far as that particular tract is concerned, without regard to the time of the final disposal of the list as a whole. 51–495

55. A departmental construction, afterwards set aside because erroneous, which held that a certain class of claims was not subject to the repayment law, does not stay the run-

ning of the two-year limitation prescribed for the presentation of repayment claims under the act of December 11, 1919. 49–666

56. An applicant who has been granted a water right in connection with a reclamation homestead application for land within a petroleum reserve is entitled, upon withdrawal of the application, rather than accept a surface patent, to repayment of the water charges, where he had no knowledge of the petroleum withdrawal and the public notice pursuant to which he made payment failed to state that any of the land was within a reserve. 50–379

57. The requirement contained in the proviso to section 2 of the act of December 11, 1919, that a claim for repayment must thereafter be presented within two years from the issuance of patent or from the passage of the act, is mandatory and can not be waived because the claimant did not have knowledge of the act for more than two years after its enactment. 50–566

58. One who, after having filed an application for a mineral patent, quitclaims to the Government his interest in the mining claims and obtains a lease under the act of February 25, 1920, is not entitled to repayment of the filing fee, inasmuch as such transaction amounts to a voluntary abandonment of the original claim and not to a rejection of the application. 50–576

59. The filing fee paid in connection with an application for a mineral patent is no more a fee for personal services of the local officers than other fees and commissions paid in connection with an entry of public land and should be repaid in a proper case. 50–576

60. The repayment statutes are not to be deemed to offer an option to a claimant either to defend against charges involving actual fraud and protect his claim or to relinquish the land and take instead the purchase price. 50–602

61. The right of a veteran [under sec. 2, act of Feb. 21, 1925] to refund under the act of February 21, 1925, of charges paid by him on a reclamation homestead entry which he relinquishes prior to receipt of final certificate and within one year after the passage of the act is not defeated by action of the Government in canceling the entry, for sufficient reasons, independently of the relinquishment. 51–329

62. The act of February 21, 1925, is applicable only to public lands and does not authorize refund of charges paid on a water-right application for the irrigation of land in private ownership. 51–345

63. An entry voluntarily and in good faith relinquished because in conflict with a prior settlement claim of another protected by the act of May 14, 1880, is "canceled for conflict" within the meaning of the act of June 16, 1880, and the entryman is entitled to repayment of the moneys paid in connection therewith. 41–328

64. A decision of the Commissioner of the General Land Office denying an application for repayment, from which no appeal was taken, is just as much a final decision as if appeal had been taken and final decision rendered thereon by the Secretary of the Interior. 44–486

II. "Erroneously allowed"

65. Where an entry, allowed unconditionally, may be confirmed as to a surface patent, such entry is not one "erroneously allowed" within the contemplation of section 2 of the repayment act of June 16, 1880. 50–298

66. Under section 2 of the act of June 16, 1880, which provides for repayment where an entry has been erroneously allowed and can not be confirmed, the fact that an entry is incapable of confirmation is not alone sufficient, but its allowance must also have been erroneous. 50–429

67. Where a desert-land entry is allowed upon a showing as to the proposed plan of irrigation, notwithstanding the fact that the Government had prior thereto appropriated the water supply in question, because of which the entry is relinquished, repayment of the purchase money paid on such entry is warranted on the ground that it was erroneously allowed. 46–440

68. In coupling the expression "can not be confirmed" with the term "erroneously allowed," as those phrases are used in section 2 of the act of June 16, 1880, which authorized repayment where an entry was "erroneously allowed and can not be confirmed," the law necessarily contemplated an entry with reference to which the defect could not be cured. 50–161

69. A mineral entry, the allowance of which was wrongfully procured by false and misleading evidence, subsequently canceled upon charges that the land was not valuable for minerals and that the requisite patent expenditures had not been made, is not an erroneously allowed entry within the purview of the repayment act of June 16, 1880, where the record was not obviously so incomplete and defective on its face as to warrant its denial in the first instance. 50–599

70. The allowance of a timber and stone entry for land subsequently withdrawn under the act of June 22, 1910, for its coal contents, is not an erroneous allowance within the purview of section 2 of the repayment act of June 16, 1880, where the entry, allowed upon the strength of a sworn statement that the land was chiefly valuable for its timber, was canceled because the land was found to be more valuable for grazing purposes. 50–627

71. A homestead entryman who upon discovery that the land embraced in the entry is coal in character relinquishes the entry upon advice of the local officers and is permitted to make a second entry for other land, is entitled to repayment of the fees and commissions paid in connection with the relinquished entry. 43–234

72. Where entry is made of land not intended to be taken, and amendment is rendered impossible because the land desired has been disposed of, the entryman, upon relinquishment, is entitled, under section 2 of the act of March 26, 1908 (35 Stat. 48), to return of all moneys paid in connection with such entry. 46–60

73. Where, by reason of a clerical error in the application, a homestead entry was allowed for land not intended to be taken, and an application to amend the entry to embrace the land desired was rejected because of the fact that it was then embraced in another entry, the entryman, upon relinquishment of the erroneous entry, is entitled to repayment of the fees and commissions paid by him in connection with said entry. 45–323

III. Act of March 26, 1908

74. While the repayment act of March 26, 1908, is supplemental to the act of June 16, 1880, it nevertheless affords relief in certain cases coming within its provisions where repayment could not be allowed under the earlier act. 41–350

75. The purchase money paid in connection with a mineral entry, made in good faith but canceled for lack of sufficient proof of discovery, may be repaid under the provisions of the act of March 26, 1908. 41–350

76. The act of March 26, 1908, specifically limits repayments thereunder to "purchase moneys and commissions," and furnishes no authority for repayment of "fees" paid in connection with applications for segregation under the Carey Act. 41–372

77. Where a desert-land entry was made for land other than that intended to be taken, due to mistake on the part of the applicant or his agent in giving erroneous description of the land desired, and the entry was there-

after for that reason voluntarily relinquished, neither the act of June 16, 1880, nor the act of March 26, 1908, authorizes repayment of the moneys paid in connection with the entry; but in the absence of fraud the entry canceled upon the relinquishment may be reinstated, if the entryman so desires, with a view to permitting him to amend his entry, under the provisions of the act of February 24, 1909, to cover other unappropriated public land. 41–65

78. Where a desert-land entry is found and adjudicated by the Land Department to be void *ab initio*, and is canceled for that reason, such entry is "rejected" within the meaning of the act of March 26, 1908, and the entryman is entitled to repayment of the purchase moneys paid in connection therewith, in the absence of fraud or attempted fraud in connection with the entry. 42–537

79. Where an application under the timber and stone act is rejected for failure of the applicant to appear and submit proof on the date fixed therefor, or within 10 days thereafter, the applicant is entitled under the act of March 26, 1908, to repayment of the purchase moneys paid in connection with the application, provided he has not been guilty of false statements, fraud, or attempted fraud in connection therewith. 42–429

80. The act of March 26, 1908, contemplates repayment of the purchase money paid under any public-land law in all cases where the applicant fails to acquire title, in the absence of fraud or attempted fraud in connection with the application to purchase; and where commutation proof upon a homestead entry was rejected solely for the reason that notice thereof by publication was defective, repayment of the purchase money paid in connection therewith should not be denied on the ground that the defect might have been cured and the entry confirmed. 42–533

81. The fact that an applicant for repayment under the act of March 26, 1908, has previously applied for and been denied repayment under the act of June 16, 1880, in no wise affects his right to repayment under the act of 1908. 43–183

82. The relinquishment of an entry in the face of a contest, where the department in a companion case held the entry there involved for cancellation, is not a "voluntary relinquishment" within the meaning of the act of March 26, 1908, and is no bar to repayment under that act. 43–477

83. The act of March 26, 1908, provides for repayment in cases where applications have been carried to entry and the entry canceled, as well as in cases of mere rejected applications. 43–221

84. The fact that an application or entry was rejected or canceled on a finding of fraud will not prevent the Land Department from reconsidering that question, in connection with an application for repayment, where it is made to appear that the facts and circumstances under which such adjudication was made were not sufficient to sustain the charge. 43–221

85. Where commutation proof is rejected for insufficient showing of residence and cultivation, and the entry held intact subject to future compliance with law, and the entryman thereupon relinquishes the entry and applies for repayment, repayment may be allowed under the act of March 26, 1908, in the absence of fraud or attempted fraud in connection with the rejected proof. 43–93

86. Directions given that departmental decision in Ernest Weisenborn, 42 L. D. 533, holding that where commutation proof upon a homestead entry was rejected solely for the reason that notice thereof by publication was defective, repayment of the purchase money paid in connection therewith should not be denied on the ground that the defect might have been cured and the entry confirmed, be no longer followed. 43–395

87. Wherever an application, entry, or proof fails or is defeated for any

cause short of voluntary abandonment or relinquishment by the applicant or entryman, it is "rejected" within the meaning of the repayment act of March 26, 1908; and where an application or entry is relinquished in the face of charges by the Government, such relinquishment will not necessarily be regarded as voluntary; but in such case the applicant for repayment will be required to make a positive showing of the facts relied upon by him, including evidence that the relinquishment was not voluntarily made. 43–104

88. A qualified assignee of a timber and stone entry is the "legal representative" of the assignor within the meaning of the repayment act of March 26, 1908, and entitled to repayment thereunder, provided it be conclusively shown that the assignee has not been indemnified by the assignor for failure of title. 44–516

89. In the absence of any fraud or attempted fraud, an applicant under the timber and stone act, upon rejection of his application, is entitled under section 2 of the act of March 26, 1908, to repayment of the $10 filing fee deposited by him in connection with his application. 45–182

90. The provision of rule 46 of the Rules of Practice that an entryman may submit final proof during the pendency and after trial of a contest against the entry and complete the same "with the exception of payment of the purchase money or commissions," is applicable to entries of surplus or unallotted Rosebud Indian lands under the act of March 2, 1907; and where the local officers erroneously required an entryman of such lands who submitted commutation proof under section 3 of the act of March 2, 1907, to make payment of the balance of the purchase price, contrary to the provisions of rule 46, the entryman is entitled, upon cancellation of the entry as result of the contest, to repayment of such balance, as excess payment, under the provisions of the act of March 26, 1908. 45–530

91. Where suits brought by the Government to cancel patents to public lands are terminated by a stipulation of compromise and settlement entered into by both parties, and confirmed by decree of court, in which stipulation it is stated in terms that it shall be a complete settlement of all property rights in said lands arising or to arise between the parties, the acts of March 26, 1908 (35 Stat. 48), and June 16, 1880 (21 Stat. 287), are without application, and return of money paid in connection with the entry of such lands will be denied, such money entering into and being a part of the claims settled and determined by the stipulation and decree. 46–116

92. In order to secure repayment under the act of March 26, 1908, the requirement that neither the applicant nor his legal representative shall have been guilty of any fraud or attempted fraud must be established. 46–433

93. A transferee of a placer-oil claim, to whom a patent is denied for the reason that the preliminary location was fraudulently made, is entitled to repayment under the act of March 26, 1908, of the moneys deposited by him pursuant to the requirements of the placer-mining laws, where it does not appear that he or his legal representatives were guilty of any fraudulent action or either had knowledge or were chargeable with knowledge that fraud had been perpetrated by his predecessor in interest. 48–367

94. An application for an oil and gas prospecting permit under the act of February 25, 1920, is a filing of the character contemplated as within the scope of the provisions of the repayment act of March 26, 1908. 49–344

95. The rule, long and consistently adhered to by the department, that where an application or filing under the public-land laws is held for rejection for partial conflict, or other reason, except fraud, the applicant is privileged prior to allowance of the claim, to withdraw the application *in toto* without prejudicing his right un-

der the act of March 26, 1908, to repayment of all fees and commissions tendered in connection therewith, is applicable with equal force and effect to applications for oil-prospecting permits under the act of February 25, 1920. 49–344

96. An application for repayment under the act of March 26, 1908, of moneys paid upon a homestead entry canceled on relinquishment prior to the passage of the act of December 11, 1919, must be denied under section 2 of the latter act if filed more than two years after the latter date, regardless of the fact that the land has been reentered by another and patent has not issued. 49–521

97. The act of March 26, 1908, the purpose of which was to afford relief in a class of cases wherein repayment was not theretofore authorized, was merely supplemental to and did not repeal or modify the act of June 16, 1880. 49–541

98. Repayment of purchase moneys and commissions subject to refund under the act of March 26, 1908, as amended by the act of December 11, 1919, is barred if not filed within two years from the date of rejection of the application, entry, or proof, where such rejection is subsequent to December 11, 1919, or within two years thereafter where the rejection occurred prior thereto. 51–66

99. A claim for repayment based upon a relinquishment of a homestead entry after March 3, 1909, and subsequent to the inclusion of the land within a coal withdrawal rather than accept a surface patent, comes within the purview of the act of March 26, 1908, and must be filed within the statutory period specified in the act of December 11, 1919. 50–297

100. An application for coal lease under section 2 of the act of February 25, 1920, is a filing within the meaning of the repayment statutes; and the coal-leasing regulations of April 1, 1920, declaring a forfeiture of the deposit made by a successful bidder in case of his default, did not intend to preclude repayment of such deposit where repayment is warranted under the act of March 26, 1908. 50–589

101. A claim for repayment under the act of March 26, 1908, based on the relinquishment of an entry because of its inclusion within a coal withdrawal, can not be allowed unless it is shown as a fact that the withdrawal was the determining factor in inducing the relinquishment. 50–418

102. Where an applicant for a coal lease under section 2 of the act of February 25, 1920, fails to comply with the terms of the bid, and his application is rejected, without fraud or fault on his part, the application becomes one rejected within the contemplation of the repayment act of March 26, 1908. 50–589

103. Where a coal entry is canceled upon a relinquishment filed during the pendency of adverse proceedings based upon a charge of fraud it will be presumed that the purpose of the relinquishment was to avoid the issue and to dispose of the charge without adjudication upon the ultimate merits, and an applicant for repayment of the purchase price under the act of March 26, 1908, must assume the burden of proof and establish a *prima facie* case as to absence of fraud. 50–602

RESERVATION

See ALASKA, 49–592; INDIAN LANDS, 42–4, 419; 43–267, 565; 48–567; MILITARY RESERVATION; NATIONAL FORESTS; NATIONAL MONUMENTS; NATIONAL PARKS; SCHOOL LANDS, 48–139, 192; WITHDRAWAL.

1. A withdrawal of public lands for power-site purposes under the provisions of the act of June 25, 1910, is a reservation within the meaning of the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes. 47–363

2. A reservation created by the Secretary of the Interior pursuant to sec-

tion 10 of the act of May 14, 1898, setting apart a particular area of public land in Alaska for the benefit of the Indians or natives does not vest them with actual title. 50–315

3. A temporary withdrawal made with the view to classification and appraisal of land for its coal content does not constitute a "reservation" within the meaning of the proviso to section 6 of the enabling act of July 16, 1894, relating to the grant of public lands to the State of Utah for school purposes. 50–516

4. Where Congress has by separate acts conferred specific jurisdiction upon the Department of the Interior and the Department of Commerce, respectively, to dispose of public lands within abandoned military and lighthouse reservations, the former department, having assumed jurisdiction with the consent of the latter, may, under its coordinate authority, dispose of lands which were formerly within both a military reservation and a lighthouse reservation. 50–559

5. Instructions of March 12, 1925; lands within petroleum reserves excepted from entry under the stock-raising homestead act; Circular No. 913, modified. (Circular No. 983.) 51–65

RESERVATIONS (LIMITATIONS)

See Homestead, 49–324, 659, 660; Oil, Gas, etc., Lands, 44–128; 49–177; Patent; Restricted Patent.

1. The act of July 17, 1914, contemplates a reservation of mineral deposits in lands embraced in unperfected nonmineral entries wherever it appears from geologic data that prospecting operations are warranted, and lands having such prospective value are "valuable for" minerals within the meaning of the act, although no actual demonstrated existence of mineral deposits has been discovered. 50–276

RESERVOIR LANDS

See Geological Survey; Irrigation Districts; Power Sites; Reclamation; Right of Way, V; Stock-watering Reservoirs.

1. Circular of September 23, 1914, under act of August 6, 1914, governing restoration to entry of lands reserved for reservoir purposes at the headwaters of the Mississippi River. 43–400

2. Lands formerly embraced in a withdrawal for reservoir purposes and restored to the public domain by the act of March 3, 1905, "subject to homestead entry only," are not subject to appropriation by location of soldiers' additional rights. 43–496

3. It is the policy of the Land Department to secure the utilization of reservoir sites to the largest extent possible, and where that purpose can be best attained by joint or double use of reservoir sites, such use will be permitted. 45–4

4. Land within an oil and gas prospecting permit must be held to be prospectively valuable for oil and gas and not, therefore, subject to disposition for a reservoir site under the act of January 13, 1897, which is limited by its terms to lands "not mineral or otherwise reserved." 51–612

RESIDENCE

See Abandonment; Absence, Leave of, 41–118, 289; 43–144, 378; 46–276; 47–95, 217, 283; Citizenship, 46–320; Contest, 43–189, 247; 46–234, 297, 448; 48–119, 167, 179, 516; Marriage, 46–481, 484; 47–9, 116; 48–141; Military Service, 48–107, 125, 203, 204, 207, 236, 650; Reclamation, 42–422, 528; 43–456; Settlement, 45–586; 47–13.

I. Generally

1. Instructions of April 18, 1913, extending time for establishment of residence on account of climatic conditions. 42–89

2. Regulations of October 4, 1917, suspending residence requirements on reclamation projects during war with Germany. 46–213

3. An entryman for a surveyed tract can not, by residing upon an adjoining unsurveyed tract, receive credit for such residence upon the tract embraced in his entry. 41–424

4. An entrywoman who marries subsequently to the making of her entry is entitled to credit under the act of December 20, 1917, for constructive residence for the time she spends in performing farm labor upon land owned or controlled by her husband. 48–154

5. One who applies to have land within a national forest listed for opening under the act of June 11, 1906, and is thereafter granted a special-use permit to occupy the land, is entitled, in submitting proof upon his entry made in pursuance of such listing, to credit for residence since the date of the special-use permit. 43–186

6. No claim is initiated to land under the act of June 11, 1906, until the Secretary of Agriculture has listed the land for entry, such list has been filed in the local land office, publication thereof made, and application to enter filed by the applicant for the listing; and while an entryman under that act may be given credit for residence during his occupancy of the land under a special-use permit prior to making entry, he does not by such occupancy acquire a settlement claim to the land within the meaning of the proviso to section 1 of the act of February 28, 1911, excepting settlement claims from the withdrawal declared by that act. 43–526

7. The provision contained in section 8 of the act of March 3, 1891, specifying that no person shall be entitled to make entry of desert land except he be a resident citizen of the State in which the land is situated, is not a continuing requirement, coextensive with the life of the entry, but merely one which must exist at the time entry is made. 49–114

8. The resident citizenship qualification imposed by section 8 of the act of March 3, 1891, is sufficiently met by a desert-land entryman, if, at the time of making entry, he had established his residence in the State in which the land is situated and his acts indicated a *bona fide* intent to make his future home in that State, although he thereafter temporarily maintained his domicile elsewhere. 49–114

II. Homestead

9. Circular No. 492 of July 27, 1916, under act of July 3, 1916, concerning leave of absence to homestead settlers on unsurveyed lands. 45–320

10. While homestead entrymen have sometimes been allowed credit for constructive residence during absences due to official employment, such absences have never been recognized as residence on mere settlement claims prior to entry. 41–430

11. Section 2 of the act of January 28, 1910, granting leave of absence to homestead entrymen in certain States for a period of three months from the passage of the act, has no application to an entryman who failed to establish residence within the time fixed by law and was in default long prior to the date of said act, and such section will not protect the entryman in such case from a charge of abandonment during such period. 41–118

12. The act of January 28, 1910, granting a leave of absence to homestead settlers in certain States for a period of three months from the date of the act, does not have the effect to protect such entries from a charge of abandonment for six months after the termination of the period of absence granted; but where absence next prior to such period of leave, and absence next following the same, together amount to more than six months, contest on the charge of abandonment will properly lie. 41–289

13. Residence during the winter months will not be required upon a homestead entry of land near the

crest of the Sierras, where, on account of its altitude, the severity of the weather, and the depth of the snow, it is not habitable during the winter. 42–143

14. The act of August 19, 1911, relieving homestead entrymen in certain States from residence and cultivation during the period therein specified, because of climatic conditions, furnishes no warrant for relieving such entrymen from residence or cultivation during any other period, the act clearly contemplating full compliance with the requirements of law both prior and subsequent to the period specifically provided for therein. 42–96

15. One who makes homestead entry of land subject and generally known to be subject to climatic or other conditions making compliance with the requirements of the law more or less difficult, takes upon himself a burden commensurate with such conditions; and so long as he retains the entry he must comply with what the law requires in the matter of residence, improvement, and cultivation. 42–96

16. The homestead law contemplates that an entry thereunder shall constitute the entryman's home and family homestead to the exclusion of a home elsewhere; and mere personal presence of the entryman upon the land does not meet the requirements of the law as to residence where he maintains a family residence elsewhere. 42–510

17. Where a homestead entryman, after the establishment of residence in good faith upon his entry, found it necessary to remove therefrom to a near-by tract owned by him, because of the fact that the land embraced in the entry was low and marshy and subject to overflow for a considerable portion of the year and rendered thereby unsuitable for a place of residence, but continued to cultivate and improve the homestead, such practically compulsory change of abode will not be held to break the continuity of his residence, and the entry may be submitted to the Board of Equitable Adjudication for confirmation. 42–540

18. The term "actual residence" as used in the homestead laws means personal presence and physical occupation of the land entered to the exclusion of a home elsewhere. 51–513

19. The requirement of the act of June 6, 1912, that the entryman maintain actual residence upon the land entered for at least seven months each year for three years, precludes the Land Department from giving the entryman credit, as part of such seven months' period, for constructive residence during the period elapsing between the date of entry and the establishment of residence. 43–231

20. Proof submitted under the three-year homestead law must show actual residence upon the land entered for at least seven months each year for three years, and the Land Department is without power to extend the privilege of constructive residence for absences during the seven months' periods. 43–559

21. The statutory requirement of the three-year homestead law of actual residence upon the land entered for at least seven months in each year for three years contemplates *bona fide* continuous residence, and presence on the homestead of one or two days each week during those periods will not suffice. 51–511

22. The requirement that the entryman shall actually reside upon his claim for seven months each year does not, however, preclude short absences for the purpose of going to market or other brief absences such as are ordinarily necessary and incident to the conduct of a farm. 43–559

23. Absence of a homestead entryman from his claim due to judicial restraint does not break the continuity of his residence and does not render the entry liable to contest on the ground of abandonment. 43–188

24. Where a homestead entryman was prevented from establishing resi-

dence by persons in occupation of the land embraced in the entry, such persons will not be heard to say that the entryman did not establish residence at the time he attempted to do so and was prevented by him. 43–344

25. A contestant who settles upon the land embraced in the entry under contest and maintains residence thereon, may be credited with the full period of such residence where the contested entry is afterwards canceled and the contestant is permitted to make homestead entry. 43–187

26. In view of the long-continued and uniform practice of the Land Department allowing a homestead entryman six months from date of entry within which to establish residence, and the fact that such practice had many times received legislative recognition, and had become a rule of property, the departmental decision in Fisher *v.* Heirs of Rule, 42 L. D. 62, 64, departing from such long-established practice, and also departing from the well-established and uniform ruling that upon the death of a homestead entryman his heirs are not required to reside upon the land, but may complete title by cultivation for a sufficient time to make up the five-year period, is overruled. 43–75

27. To entitle a claimant to a preference right of entry by reason of prior settlement it is essential that he establish residence on the land claimed within a reasonable time after his first acts of settlement, to the exclusion of a home elsewhere, and such residence must be maintained pending the determination of an adverse claim. 44–542

28. Where a woman, having an unperfected homestead entry, marries a man having a similar entry, and thereupon abandons her claim and resides with her husband upon his claim until he offers proof and receives final certificate, and they then establish residence upon her claim, prior to the initiation of a contest against the same, she thereby cures her default in the matter of residence and is entitled to perfect her entry. 44–148

29. The leave of absence granted to any homestead settler or entryman under the provisions of the act of December 20, 1917, for the purpose of performing farm labor during the pendency of the existing war, is not dependent upon the remoteness of the place of employment from the claim; it is sufficient that the absence be in good faith for the purpose contemplated by the statute, and that due compliance be made with the regulations thereunder. 47–47

30. Where an additional homestead entry under section 6 of the act of March 2, 1889, is changed by amendment to an entry under section 7 of the enlarged homestead act, including additional contiguous land, residence thereon under the first-named act will be credited to the period required by the later law. 46–168

31. Credit for military service can not be allowed in fulfillment of the one-year period of residence required by the act of April 6, 1914, which provides that upon the intermarriage of a homestead entryman and a homestead entrywoman, "after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage," they may carry both entries to completion in the manner provided by that act. 44–243

32. The mere election of a homestead entryman to public office, and the taking of the oath of office thereunder, does not *ipso facto* carry with it exemption from residence upon the homestead; but where the entryman can reside upon his claim continuously, or at frequent intervals, and at the same time perform the duties of his office, he should do so as an evidence of his good faith; and where his good faith is thus shown he may be given credit, under the five-year law, for constructive residence during such periods as he is necessarily absent in the performance of the duties of his office. 44–337

33. There is no special rule applicable to school teachers respecting the

residence required upon a homestead entry, the statute operating on all settlers alike, regardless of their occupations. 45–190

34. Credit for military service may be allowed, under section 2305, Revised Statutes, on entries under section 6 of the enlarged homestead acts of February 19, 1909, and June 17, 1910, upon compliance with the provision of said section requiring residence, cultivation, and improvement for the period of at least one year. 45–324

35. The requirement of section 2305, Revised Statutes, as to at least one year's residence on the land by a soldier or sailor entitled to credit for military service, is satisfied by seven months' actual and five months' constructive residence thereon. 46–115

36. The act of July 28, 1917, allowing credit for military service, does not waive the residence and cultivation requirements of the statute; it merely reduces them. 48–107

37. Time served as paymaster's clerk in the United States Army during the war with Spain or the suppression of the Philippine Insurrection is military service within the purview of sections 2304 and 2305, Revised Statutes, for which credit is allowable in lieu of homestead residence. 51–149

38. The act of July 28, 1917, makes military or naval service during time of war by one who had previously made a homestead entry equivalent to the establishment and maintenance of residence for the period thereof; and where such entryman, upon his discharge, lawfully obtains leave of absence, an application to contest on the ground of abandonment will not be entertained until after the lapse of six months from the expiration of such leave. 49–514

39. Failure timely to establish residence upon a homestead entry can not be excused on the ground of poverty and a personal injury subsequently incurred while at work elsewhere in gaining a livelihood, especially where the poverty existed at the date of the entry and the entryman had no reasonable assurance that it would not continue. 48–361

40. A contest against a homestead entry on the ground of failure timely to establish residence is prematurely initiated and should be dismissed where the statutory period of the entry has not expired and it is shown that the entryman is in the military service of the United States pursuant to an enlistment antedating March 3, 1921. 49–617

41. The provision contained in the act of February 25, 1919, reducing, for climatic conditions, the minimum residence of a homestead entryman to five months in each year for a period of five years, is mandatory and does not confer upon the Land Department authority to accept less than the length of residence specified in the act. 49–602

RES JUDICATA

See ESTOPPEL, 49–660; JURISDICTION; LAND DEPARTMENT, 50–10; REPAYMENT, 43–221; 44–113, 486; SCHOOL LANDS, 48–192, 387; SELECTION, 48–343.

1. While the rules of *res judicata* and *stare decisis* should be considered and respected by the Secretary of the Interior, he is not precluded thereby from taking proper action in any matter remaining subject to his jurisdiction. 41–384

2. The department will apply the doctrine of *res adjudicata* and refuse to reopen a case in which there has been a final determination by it that a patent, issued on an entry in accordance with the official plat of survey existing at date of entry, conveyed title to adjoining lands added by accretion, where another subsequently attempts to set up a claim to a part of the land involved with the view to defeating the title asserted by purchasers who relied upon the validity of the patent. 49–253

3. Final adjudication of a case involving the time settlement was ini-

tiated renders that question *res adjudicata* between the parties thereto, and the unsuccessful applicant is estopped from having the matter relitigated by alleging an earlier hour of settlement than that originally asserted. 47–13

4. The final adjudication of a case by the Land Department adversely to a claimant in accordance with the governing rule then in force renders the question involved therein *res adjudicata* between the parties thereto, and a subsequent change in the interpretation of the law, either by the department or by the courts, as the result of diligent prosecution of a similar claim by another in a separate and distinct proceedings, will not entitle the former to have the matter relitigated to the detriment of the property rights of a third party. 48–192

5. The application by the department of the rule of *res adjudicata* to controversies in which final decisions have been rendered by it, is based upon the well-established principle that there must come a time when there is to be finality of action in order to prevent endless confusion in matters in which parties seek readjudication in the light of changes resulting from subsequent rulings of the department or of the courts. 50–173

RESTORATIONS

1. Instructions of May 17, 1917, regarding opening of lands released from withdrawal or excluded from national forests. 46–121

2. Regulations of May 2, 1923; restoration of lands in the former Oregon and California and Coos Bay Wagon Road grants. (Circular No. 892.) 49–566

3. Land segregated from the public domain, whether by patent, reservation, entry, selection, or otherwise, is not subject to settlement or any other form of appropriation until its restoration to the public domain is noted upon the records of the local land office. 46–55

4. So much of the decision in the case of Sarah V. White (40 L. D. 630) as holds that land restored to the public domain as the result of vacation of patent thereby becomes subject to settlement, if unappropriated, is overruled. 46–56

5. An Executive order vacating a withdrawal and restoring lands to the public domain, does not, in the absence of express terms specifying how and when the lands shall be disposed of as authorized by the act of September 30, 1913, have the effect of restoring the lands to settlement and entry, but the time and methods of their disposition under appropriate laws remain a matter of determination by the Secretary of the Interior. 48–507

6. Lands restored to entry upon the annulment of an invalid patent do not become subject to homestead entry generally until the expiration of the preference right privilege accorded by Congress to discharged soldiers, sailors, and marines. 49–549

7. The restoration of a tract of public land eliminated from a national forest for townsite purposes does not preclude the making of a soldiers' additional entry therefor by an occupant whose right of occupancy was not extinguished by the Executive order which established the forest reserve. 49–278

8. The title or ownership of the United States in lands within a reservation for Indian purposes, created by Executive order, not controlled by any treaty or act of Congress, is in no wise affected by the withdrawal, and such lands may be restored to the public domain by the President at any time within his discretion. 49–139

9. The preference right privilege accorded by Congress to discharged soldiers, sailors, and marines upon the restoration of withdrawn lands is to be applied impartially and can not be defeated by the filing of an application to make entry prior to the restoration, even though the applicant be one of the preferred class. 49–111

10. Lands within a grant, declared invalid by a court of competent jurisdiction, do not become subject to homestead entry, even by one having the preferred status accorded by Congress to discharged soldiers, sailors, and marines, until a time fixed for their opening in an order of restoration issued by the Secretary of the Interior, and an application to make entry filed prior to the prescribed date can not be held suspended to await restoration with a view to conferring any rights upon the applicant. 49–548

11. A reclamation withdrawal existent at the date of the grant made to the State of Arizona by section 24 of the act of June 20, 1910, of certain designated sections of public lands for school purposes, does not defeat the operation of the grant, as to lands subsequently restored from the withdrawal, but the right of the State attaches to surveyed lands within the specified sections immediately upon their restoration from the withdrawal, if the State has not selected indemnity therefor. 49–611

12. The right of the State of Arizona which attaches to surveyed school lands immediately upon their restoration from a reclamation withdrawal, can not be defeated by the initiation of a desert-land claim subsequently to the date of the restoration. 49–611

13. The act of April 18, 1896, which restored to the public domain those lands formerly in the Fort Assiniboine Military Reservation, Mont., and made them subject to disposal under the laws specifically named therein, did not have the effect of reserving the lands from the operation of further legislation, and they became, therefore, upon the passage of the act of March 2, 1899, subject to selection by the Northern Pacific Railway Co. 49–540

RESTRICTED PATENT

See Coal Lands, VI; Railroad Grant, 45–155; Reservations (Limitations).

RESURVEY

See Survey, II.

REVISED STATUTES

See Part II of this Digest.

RIGHT OF WAY

See Alaska, 44–22; Coal Lands, 48–443; Indian Lands, 45–473, 563; 48–362; 49–396; Irrigation Districts; Patent, 45–460; Power Sites, 41–150, 454, 460, 471, 532; 42–4, 348, 419; 43–118, 551; Reclamation, 42–547; Reservation, 44–513; Reservoir Lands, 43–400, 496; Survey, 45–646.

I. Generally

1. Regulations of November 14, 1914, governing rights of way upon unsurveyed lands within national forests. 43–448

2. Regulations of March 3, 1915, concerning notation of rights of way on the face of patents. 44–6

3. Paragraph 53 of circular of June 6, 1908, relating to rights of way through unsurveyed land, amended May 24, 1916. 45–91

4. Instructions of May 18, 1925, rights of way over public lands and reservations; paragraph 38, circular of June 6, 1908, as amended May 7, 1912, further amended. (Circular No. 1003.) 51–147

5. Instructions of July 8, 1926, rights of way over public lands and reservations; circular of June 6, 1908, amended. (Circular No. 1076.) 51–485

6. The title of a right of way grantee is the same; that is, a base or qualified fee, whether the grant is made pursuant to the act of March 3, 1875, or to the act of March 3, 1891. 51–305

7. An application for a right of way for a reservoir site within the limits of a forest reserve, shown to be reasonably needed for the purpose of the storage of tailings produced by the milling and reduction of copper ores,

is clearly within the contemplation of that provision of section 4 of the act of February 1, 1905, authorizing the granting of such rights of way for the purposes of mining, milling, and reduction of ores, during the period of their beneficial use. 47–224

8. There being no statutory provision requiring final certificates and patents issued upon homestead entries of lands over which pass rights of way acquired under the act of March 3, 1891, to contain a notation of exception thereof, and such notation not being necessary to the protection or preservation of such rights of way, the Land Department declines to include such notation in the final certificates and patents. 45–460

9. Neither the act of March 4, 1913, nor the instructions of January 13, 1916, authorize the withdrawal or reservation of public land, or insertion of an excepting clause in a patent for said land, over which may pass a trail or right of way for a prospective road. 47–181

10. The approval of a right of way grant for a reservoir site pursuant to the act of March 3, 1891, confers upon the grantee such an estate in the land as to preclude the department from issuing an oil and gas prospecting permit to another under section 13 of the act of February 25, 1920. 51–27

11. The superficial area embraced in a right of way for a reservoir granted by the act of March 3, 1891, is measured and determined by the high-water line as shown by the approved map, and the approval of the map is an adjudication that the whole area within such line is required for the construction, maintenance, and care of the reservoir; further, the grant accords the use of an additional strip 50 feet wide adjoining the marginal limits of the reservoir when the need therefor is established. 51–27

12. A grant of a right of way under the act of March 3, 1891, does not carry with it any right, title, or interest in or to mineral deposits underlying the land, or any right to prospect for, mine, and remove oil or gas deposits, either directly by the grantee or indirectly by a lessee thereof, but the title to such deposits remains in the United States, subject only to such disposition as may be authorized by law. 51–27

13. The issuance of an Executive order of restoration is not a prerequisite to the approval of a right of way under the acts of March 3, 1891, and May 11, 1898, across lands withdrawn for military use, inasmuch as the law grants rights of way through the public lands and reservations except in national parks and national monuments. 51–122

14. Easements over the public lands may be granted under the various Federal Statutes appertaining thereto to a commission created and empowered by a State legislature for the purpose of acquiring a site and of constructing and maintaining a tunnel for the use of railroads, power, telegraph and telephone lines, transportation of water, and as a highway for vehicles, notwithstanding that the actual operation of these utilities is to be conducted by others, where their maintenance is for the public interest. 50–359

15. The act of May 21, 1896, granting rights of way through the public lands in the States of Colorado and Wyoming to pipe-line companies for the purpose of transporting oil, was repealed and superseded by section 28 of the general leasing act of February 25, 1920. 51–41

16. Section 28 of the act of February 25, 1920, specifies that pipe lines for conveying oil and gas through the public lands pursuant to rights of way authorized by that act, shall be operated and maintained as common carriers. 51–41

17. The Federal water power act confers upon the Federal Power Commission the jurisdiction and control over rights of way for power purposes, formerly exercised under the act of February 15, 1901, by the Land De-

partment, except as to projects involving Indian allotments or where the electrical energy is to be developed other than hydraulically. 51–41

II. Railroad, Tramroad, etc.

18. Regulation 8 of the regulations of January 6, 1913, concerning rental charges for electrical transmission lines, amended August 11, 1915. 44–335

19. Section 4 of the act of March 3, 1875, does not authorize the filing of a profile of the road in advance of the filing of the township plat of survey in the local office. 43–392

20. The requirement in the regulations of May 21, 1909, under the act of March 3, 1875, that the map required by that act, showing the profile of the road, shall be accompanied by a certificate that the survey represented thereon has been adopted by the company as the definite location of its road, has no application where the route of the road is wholly over unsurveyed lands; the filing of profiles showing rights of way over unsurveyed lands, for general information, being governed by paragraph 14 of said regulations, which does not require such certificate. 43–78

21. Profiles of rights of way over unsurveyed lands should conform as nearly as practicable with the requirements governing profiles of routes over surveyed lands. 43–78

22. Entry and patent of a legal subdivision crossed by the 400-foot right of way granted to the Northern Pacific Railway Co. by the act of July 2, 1864, carries no interest or title to the right-of-way strip; and upon subsequent abandonment of the right of way the title thereto reverts to the United States and does not pass to the owners of the subdivisions through which the right of way runs. 43–556

23. A right of way granted under the act of March 3, 1875, is neither a mere easement nor a fee simple absolute, but a limited fee, made on an implied condition of reverter in the event that the grantee ceases to use or retain the land for the purposes for which it was granted, and carries with it the incidents and remedies usually attending the fee. 51–131

24. A railroad right of way granted pursuant to the act of March 3, 1875, conferred upon the grantee a limited fee, subject to an implied condition of reverter should the land cease to be used or retained for the purposes for which granted, and none of the land therein is subject to location and appropriation under the mining laws while the grant remains in effect. 51–604

25. The act of August 30, 1890, reserves perpetually to the United States an easement and right of way through and over all lands west of the one hundredth meridian thereafter patented under any of the public-land laws; and thereunder, in the necessary construction, maintenance, and operation of any ditches, canals, or laterals for the purpose of irrigation and reclamation of arid lands, the Government is not liable for damages resulting to the land; nor can they be included in the computation of the actual value of improvements thereon for which compensation may be made. 47–158

26. The action of Congress in authorizing the construction and operation by the United States of the Alaskan Railroad in effect created a legal easement with a corresponding servitude imposed on the adjoining land held by the grantor for support of the surface with the superimposed structures, and the road is entitled to lateral or adjacent support as well as to vertical or subjacent support from one who leases coal lands pursuant to the act of October 20, 1914. 48–443

27. A railroad company having a right of way over mineral lands is entitled to the support of its easement, roadbed and rolling stock, and the right to take ore underneath the surface thereof must yield, if, in order to take it, the support of the roadbed will be impaired. 48–443

28. A coal lease granted under the provisions of the leasing act of October 20, 1914, which is in terms restricted to the Territory of Alaska, is subject to the reservations contained in the act of March 12, 1914, authorizing the construction and operation of railroads by the United States in that Territory. 48–443

29. Section 13 of the Alaskan coal leasing act of October 20, 1914, provides that the possession of the lessee shall be deemed the possession of the United States for all purposes involving adverse claims to the leased property, and where questions arise as to the conflict or rights between a right-of-way grantee and the coal lessee, said disputes should be arbitrated in accordance with Article VII of the mining lease. 48–443

III. Telegraph, Telephone, etc.

See ALASKA LANDS, 43–523.

30. Regulations of January 6, 1913, governing rights of way for telegraph and telephone lines. 41–454

31. Regulations of October 15, 1913, amending paragraph 6 of regulations of January 6, 1913. 42–465

32. Instructions of November 23, 1915, concerning exception of right of way for transmission lines in patents. 44–412

33. Paragraph 3 of the regulations of March 1, 1913, providing that priority of applications for power permits under the act of February 15, 1901, shall depend upon the order of filing complete applications, relates only to priority between rival applicants for permission to investigate and utilize public lands for the construction of power plants, and has no application to cases where actual development has already occurred. 44–471

34. Where telephone lines have been actually constructed upon public lands of the United States, including national forest lands, and are being maintained and operated by the United States, appropriate maps or field notes thereof should be furnished the Commissioner of the General Land Office and notation thereof made upon the tract books of that office; and if the lands be thereafter disposed of under any of the public-land laws the final certificate and patent should except the telephone line and appurtenances with the right of the United States to maintain and operate the same. 44–359

IV. Station Grounds

See ALASKA LANDS, 43–523.

35. Section 1 of the act of March 3, 1875, does not make an absolute grant of 20 acres of public lands for station purposes for each 10 miles of road, regardless of necessity therefor; but the measure of the right thereby granted is the reasonable necessities of the road, not to exceed either 20 acres to each station or one station for each 10 miles. 41–599

36. In making a showing to support an application for station grounds under the act of March 3, 1875, the railroad company is not limited to immediate necessities but may include the reasonable demands of the future based upon existing probabilities. 41–599

37. The use of station grounds acquired under the act of March 3, 1875, is not restricted to the uses specifically mentioned in the act, but may, upon a clear and definite showing of necessity therefor, include any use legitimate to the general business of railroading as carried on by railroad companies generally in serving the public. 41–599

38. The act of March 3, 1875, does not contemplate or authorize the inclusion within an application for station purposes of lands desired merely for the purpose of taking therefrom earth and other material to be used in the construction or maintenance of the road. 41–599

39. The actual construction of a railroad over public lands does not fix

the boundaries of the station grounds necessary to, desired, and subject to acquisition by the railroad company. 43–392

40. Except as provided in section 4 of the act of March 3, 1875, station grounds can only be secured under that act by the construction of station houses, sidetracks, etc., and only to the extent of the ground actually occupied by the railroad for such purposes. 43–392

41. Section 1 of the act of March 3, 1875, making a grant of not to exceed 20 acres of public lands for station purposes for each 10 miles of road, contemplates that the railroad company may take any amount of land not exceeding 20 acres for each station; and the Secretary of the Interior is without authority to determine how much land may be necessary or to restrict the area which may be taken for a station so long as it does not exceed 20 acres. 43–410

42. A railroad right of way and station grounds, employed for railroad purposes, across land embraced in a homestead entry, are no bar to the issuance of final certificate and patent upon the entry, although such right of way and station grounds are occupied for other than railroad purposes by persons claiming under the railroad company. 46–429

V. Canals, Ditches, and Reservoirs

See INDIAN LANDS, 45–563.

43. Regulations of May 7 and July 10, 1912, amending paragraphs 8, 38, and 43 of regulations of June 6, 1908. 41–13, 101

44. Circular of June 18, 1915, modifying paragraph (*a*), section 30, of regulations of June 6, 1908, relating to reservoirs for watering livestock. 44–127

45. Administrative ruling as to applications for reservoirs and canals in conflict with approved rights. 46–418

46. Instructions of April 8, 1919, amending paragraph 36 of circular of June 6, 1908. Stock-watering reservoirs on unsurveyed lands. (Circular No. 638.) 47–117

47. Instructions of May 16, 1921; easements for ditch rider stations. (Circular No. 757.) 48–113

48. Application of the city of San Francisco for Lake Eleanor and Hetch Hetchy Valley reservoir sites, in Yosemite National Park, considered and discussed. 41–561

49. Lands in the north half of the Colville Indian Reservation, allotted in severalty and held under trust patents, constitute a reservation of the United States within the meaning of section 18 of the act of March 3, 1891, and the department has jurisdiction, with consent of the allottee or after condemnation proceedings, to approve, under that act, rights of way across the same for an irrigation canal. 45–563

50. A prior subsisting approval of a right of way under the act of March 3, 1891, will not prevent favorable action upon a second application for right of way under said act, in conflict with the approved right, where the public interest would be best subserved and protected by such course. 41–516

51. An application for an easement under sections 18 to 21 of the act of March 3, 1891, for a site of an irrigation reservoir, the utilization of which might jeopardize the success of a Government reclamation project, should not be granted, but authority to construct such reservoir, under the supervision and control of the Secretary of the Interior, may be granted under the provisions of section 2 of the act of February 21, 1911. 41–425

52. The mere fact that lands reserved as reservoir sites under the acts of October 2, 1888, and August 30, 1890, fall within the exterior limits of a national forest subsequently created does not in any wise change their status of reserved reservoir lands, or render them subject to appropriation under section 4 of the act of February 1, 1905, granting rights of way for the construction and mainte-

nance of dams, reservoirs, etc., for municipal and mining purposes, within and across forest reserves of the United States. 41–31

53. A water-right permit issued by the State of Wyoming to an applicant for right of way for reservoir, canal, or ditch easement under the act of March 3, 1891, qualified by indorsement thereon that the waters of the stream from which he proposes to secure his water supply is already largely appropriated and that "the issuance of this permit grants only the right to divert and use the surplus or waste waters of the stream, and confers no rights which will interfere with or impair the use of water by prior appropriators," does not constitute a prima facie showing of right to appropriate sufficient water to utilize the grant, in contemplation of departmental regulations, and the applicant will be required to furnish other satisfactory prima facie evidence showing that he will be able to control, through diversion or storage, sufficient water to utilize the grant desired. 41–10

54. The fact that an application for a reservoir easement upon unsurveyed lands, under the acts of March 3, 1891, and May 11, 1898, has been accepted and filed for general information, will not prevent the acceptance and filing for general information of a like application by a different party for the same land. 42–111

55. It is not necessary to entitle a company to a reservoir easement under the acts of March 3, 1891, and May 11, 1898, that it shall have been organized for the main purpose of irrigation of arid lands, provided it is authorized under its articles of incorporation to construct canals and ditches, and it is shown that the right of way applied for is in good faith sought for irrigation purposes and does not involve the use of the public domain for purposes not contemplated by the statute. 42–217

56. It is not essential that an application for right of way under the act of March 3, 1891, shall cover the entire system necessary to ultimately irrigate the lands proposed to be irrigated, it being sufficient if it cover a substantial and requisite portion of the necessary system. 42–595

57. A withdrawal under the reclamation act will not bar the allowance of an application for right of way under the act of March 3, 1891, over the withdrawn lands, where the allowance of the application will not interfere with the use of the lands by the United States in connection with the administration of the reclamation act and where the water proposed to be conveyed over such right of way has not been appropriated and is not claimed by the United States. 42–595

58. The reservation of rights of way for canals and ditches required by the act of August 30, 1890, to be inserted in patents for public lands west of the one hundredth meridian need not be inserted in patents issued for lands granted to railroad companies to which the grant or right of the company attached prior to the date of said act; but should be inserted in patents for lands covered by indemnity selections made by railroad companies, and in selections made by the Northern Pacific Railway Co. under the provisions of the act of July 1, 1898, in all cases where such indemnity or other selections are approved subsequent to August 30, 1890. 42–396

59. The high-water line of water having a natural ground shore is the marginal limit thereof within the meaning of section 18 of the act of March 3, 1891, granting rights of way for reservoirs, canals, and ditches "to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof"; but where the water is confined by a constructed wall, dam, or embankment, the marginal limit of such wall, dam, or embankment constituting a portion of the reservoir should be taken as the marginal limit

in estimating the fifty-foot outward boundary of the right of way. 43–317

60. The Secretary of the Interior is without authority to approve an application under the act of March 3, 1891, for right of way over land covered by a trust patent on an Indian allotment made under section 4 of the act of February 8, 1887. 44–511

61. Reservoirs for the watering of livestock under the act of January 13, 1897, may be located only "upon unoccupied public lands of the United States, not mineral or otherwise reserved"; and the Land Department is without power to allow or approve filings or maps for reservoir claims under that act initiated and asserted in the face of a withdrawal and reservation in favor of the State under the act of August 18, 1894. 44–468

62. No such right is acquired by the construction and use of a reservoir for watering livestock, in the absence of a declaratory statement as required by the act of January 13, 1897, as will except the land from the operation of a withdrawal for the benefit of the State under the act of August 18, 1894. 44–469

63. It is the policy of the Land Department to secure the utilization of reservoir sites to the largest extent possible, and where that purpose can be best attained by joint or double use of reservoir sites such use will be permitted. 45–4

64. The act of December 19, 1913 (38 Stat. 242), granting to the city and county of San Francisco right of way over and through the Yosemite National Park, the Stanislaus National Forest, and certain public lands for a water supply, hydroelectric power, and other purposes, excepted from its force and effect, as to certain things, "lands upon which homestead, mining, or other existing valid claim or claims shall have been filed or made, and which now in law constitute prior rights to any claim of the grantee." *Held*, that the rule *ejusdem generis* applies, under which the class of claims excepted is limited to claims of the same general character as those specifically mentioned in the act, and that consequently a prior ungranted application for a license for a right of way over such lands does not come within the scope of the exception. 46–89

65. An unapproved application, under the act of February 15, 1901 (31 Stat. 790), for a right of way over public lands for power purposes, is not a bar to a grant, subsequently made, of a conflicting right of way over such lands. 46–90

66. There is nothing in the language of section 11 of the act of December 19, 1913, which even by inference repeals existing statutes requiring approval by the Secretary of the Interior of applications for rights of way as a prerequisite to the use of public lands for reservoirs and other means for power development, citing State of California *v.* Deseret Water, Oil & Irrigation Co. (243 U. S. 415). 46–90

67. An amendment of its map to include additional lands necessary for the protection of its water supply is such a change of location as may be made by the city and county of San Francisco, Calif., at any time prior to the completion of the work, under the first proviso to section 2 of the act of December 19, 1913 (38 Stat. 242). 46–377

68. A grant of rights of way under section 4 of the act of February 1, 1905 (38 Stat. 628), for the construction and maintenance, in national forests, of dams, reservoirs, water conduits, water plants, etc., for municipal purposes, is not confined to municipal corporations, but may be obtained by citizens or private corporations for the purpose of furnishing water for municipal purposes or the operation of mining or milling works not their own. 46–240

69. Under the proviso of the act of Congress of August 30, 1890 (26 Stat. at L. 391, ch. 837), requiring that all patents for lands thereafter taken up

under any of the land laws of the United States should contain a reservation from the lands granted of a right of way for ditches or canals constructed by the authority of the United States, it was the duty of the Land Department of the Government, in issuing a patent to the Southern Pacific Railroad Co. for indemnity lands under the act of July 27, 1866 (14 Stat. at L. 292, ch. 278), which lands were selected by that company after the passage of the act of 1890, to insert in the patent a reservation from the lands thereby granted of such a right of way. 46–407

70. A permit to appropriate public waters under State authority does not of itself confer upon the user any interest in public lands, and consequently no vested right of way easement for canals and reservoir sites is obtained as an incident to the appropriation of waters under the statutes of the State of Wyoming. 48–278

71. No such vested right to the use of public waters is obtained by the mere approval of an appropriation permit under a State statute, prior to beneficial use, as will entitle the permittee to a right of way for the construction of ditches and canals under sections 2339 and 2340, Revised Statutes, and a withdrawal of public lands prior to such beneficial use will prevent the granting of an application for a right of way under the act of March 3, 1891. 48–278

72. In the necessary construction, maintenance, and operation of canals and other structures upon a right of way conveyed to the Government for reclamation purposes, the United States is not liable for the value of loss of the land conveyed or for general damages resulting from the use of the easement. 49–188

73. Lands covered by a canal or other structures constructed by the Reclamation Service for reclamation purposes, and lands made nonirrigable thereby are not properly a part of an irrigation unit, and one who has paid construction charges thereupon is entitled to credit or reimbursement therefor. 49–188

74. The inhibition in the act of March 3, 1921, against the granting thereafter of any permit or other authorization for reservoirs or other works for the storage or carriage of water within the limits of any national park or national monument without specific authority of Congress, is applicable to such works for irrigation purposes as well as for power purposes, and precludes the granting of an extension of a right of way over such lands for an irrigation reservoir constructed pursuant to the act of March 3, 1891. 50–388

75. While an entry upon land, segregated by a previously issued oil and gas prospecting permit, and the construction of a reservoir thereupon without protest by the permittee, in anticipation of the allowance of a soldiers' additional homestead application which depended wholly upon departmental discretion for its validity, is not an entry under color of right, but a trespass, yet where it is shown that the reservoir is reasonably essential to the working of the land under lease and that the interests of the Government will best be protected through the granting of a revocable permit, an easement may be granted pursuant to the act of February 15, 1901. 50–525

76. The inhibition in the act of March 3, 1921, against the granting of rights of way over public lands within national parks and national monuments without specific authority of Congress is applicable to the extension of canals for the irrigation of Indian lands, and nothing in the act of August 30, 1890, reserving a right of way for ditches or canals constructed by authority of the United States, or in the appropriation acts providing for the construction of irrigation works for the benefit of the Indians, grants that authority. 50–569

VI. Pipe Lines

77. The grants of rights of way contained in the act of March 3, 1891, as amended by the act of May 11, 1898, are limited to "ditches, canals, or reservoirs," and should not be extended to include a conduit wherein water flows under pressure, as in a pipe line, unless it is a mere incidental connecting link in a conduit wherein water flows, as in a canal or ditch, as, for example, a culvert or an inverted siphon to carry an irrigating ditch past a stream. 41–138

78. Departmental decision in Malone Land & Water Co. (41 L. D. 138), in so far as it denies rights of way for pipe lines for irrigation purposes under the act of March 3, 1891, is overruled. 43–110

79. Applications for rights of way for pipe lines should be made under the act of February 15, 1901, which act specifically authorizes the Secretary of the Interior to permit the use of rights of way for "pipes and pipe lines, flumes, tunnels, or other water conduits." 41–138

80. The purpose for which a right of way is sought and for which conduits are to be constructed and utilized will control in the determination as to which of existing laws is applicable to the granting of the right. 43–110

81. Rights of way for pipe lines may be allowed under the provisions of the act of March 3, 1891, as amended by the act of May 11, 1898, granting rights of way for reservoirs, canals, and laterals, where the rights sought are to be utilized for the main purpose of irrigation. 43–110

RIPARIAN RIGHTS

See Accretion, 50–357; Alaska Lands, 44–441; Lake; Navigable Waters, 49–452; 50–679; Patent, 50–10; Purchaser, 49–253; Res Judicata, 49–253; Survey, 46–68; 48–128; 50–216, 381, 402, 679.

1. The question as to how far the title of a riparian owner extends is one to be determined by State law, and in Louisiana, while the State has by legislation granted to owners of adjoining lands, accretions and relictions found and added imperceptibly on the edge of rivers or running waters, yet the State has not, with the exceptions mentioned, resigned to riparian proprietors the rights inuring to it as a sovereign power. 49–453

2. Upon the admission of Louisiana to the Union, the United States relinquished all claim to the lands underlying navigable waters in that State, and the transfer of that ownership being complete and final, the rule that the title to submerged lands remains, after their reappearance, in the one who owned the lands prior to their submergence, can not be invoked by the United States with respect to an area covered with a body of navigable water at the time that the State was admitted. 50–180

3. Prior to the issuance of an unrestricted patent by the Government to its lands abutting upon a nonnavigable lake, the law of the State in which the lands are situated has no effect upon the title to the lands in the lake bed, and the United States may dispose of the bed of the lake separate from the uplands without regard for local law. 50–281

4. An unrestricted patent issued by the Government, conveying lands abutting on a nonnavigable lake, divests it of all title to or interest in the lake bed, including minerals therein, and the extent of the title of the riparian proprietor is thereafter to be determined in accordance with the laws of the State in which the lands lie. 50–284

5. Montana has specifically adopted by statute the common-law rule of ownership by riparian proprietors of lands underlying nonnavigable bodies of water wherever not inconsistent with its constitution, or the Constitution and statutes of the United States. 50–285

6. A patent conveying title without reservation to public lands abutting upon a nonnavigable lake in the State of Montana includes, in accordance with the common law, the lake bed as appurtenant to the uplands, and the fact that it has been the settled policy of Congress to reserve saline lands from disposal, except pursuant to special laws, does not confer upon the Land Department any jurisdiction thereafter to issue a permit to prospect for sodium in the bed of the lake. 50–285

ROSEBUD INDIAN LANDS

See INDIAN LANDS, 44–195; TOWN SITES, 47–177.

ROYALTY

See COAL LANDS, V, VIII; OIL, GAS, ETC., LANDS; POTASH LANDS; SULPHUR LANDS.

RULES OF PRACTICE

See PRACTICE II.

SALINE LANDS AND SALT SPRINGS

See MINERAL LANDS, 49–15; 50–285; OIL, GAS, ETC., LANDS, 50–281, 364.

1. Lands in national forests chiefly valuable on account of saline springs or saline deposits are subject to location and disposal under the mining laws only. 45–620

2. The fact that the State of Utah may, in satisfaction of its grant under section 8 of the enabling act of July 16, 1894 (28 Stat. 107–109), resort to saline as well as agricultural lands within the State, confers no right to select saline lands, so long as they remain in a national forest. 45–620

3. Entries, selections, or locations can not be allowed for lands valuable for deposits of chloride of sodium, or salt, inasmuch as there is no provision of law under which a reservation of such mineral to the United States may be made. 49–435

4. The term "chlorides of sodium" as used in sections 23 and 24 of the act of February 25, 1920, includes ordinary table salt and salt in solution, and lands chiefly valuable for their salt springs or deposits of salt, except in San Bernardino County, Calif., are subject to exploration and lease under the provisions of those sections. 49–502

5. The placer mining laws which were extended to saline lands by the act of January 31, 1901, were repealed in so far as they related to lands of that character by the general leasing act of February 25, 1920, except as to San Bernardino County, Calif., and except as to valid claims elsewhere existent at the date of the passage of the latter act. 49–502

6. Lands chiefly valuable for their salines in San Bernardino County, Calif., and valid claims for saline lands elsewhere that are excepted by section 37 of the leasing act of February 25, 1920, from the operation of sections 23 and 24 of that act, are still subject to disposition under the placer mining laws as extended by the act of January 31, 1901. 49–503

SANTA BARBARA GRANT

See PRIVATE CLAIM, 51–75.

SANTA FE PACIFIC RAILROAD CO.

See RAILROAD GRANT.

SCHOOL LANDS

See COAL LANDS, 41–265; INDEMNITY, 50–20, 528, 668; MINING CLAIM, 42–265; OIL, GAS, ETC., LANDS, 49–177; 50–231.

I. Generally

1. Instructions of September 22, 1920; school sections, Blackfeet Indian Reservation. 47–568

2. Instructions of August 4, 1921, under administrative order of April 23, 1921, with reference to State, railroad, and lieu selections. 48–172

3. The grant of sections 16 and 36 made to the State of Washington by

the act of February 22, 1889, was prior to survey of the land in compact only—an executory agreement; and until survey it was competent for the Congress of the United States to make other disposition of the land. 41–621

4. The State of Washington acquires no vested right or title under the grant of sections 16 and 36 made to said State, for school purposes, by the act of February 22, 1889, until said sections have been identified by survey, and, by virtue of section 2275 of the Revised Statutes, as amended by the act of February 28, 1891, a bona fide settlement upon a section 16 or 36, existing at the date of such identification, excepts the land covered thereby from the operation of the grant. 41–621

5. The State of Washington acquires no vested right or title under the grant of sections 16 and 36 made to said State, for school purposes, by the enabling act of February 22, 1889 (25 Stat. 676), until said sections have been identified by survey. 45–593

6. Where school sections, prior to public survey, are included within a national forest, they may be administered in all respects as are other lands within the reservation, and are subject to entry under the provisions of the act of June 11, 1906 (34 Stat. 233). 45–593

7. The grant of sections 16 and 36 to the State of Washington for school purposes does not attach until the survey thereof has been approved by the Commissioner of the General Land Office. 48–132

8. The question whether or not the title to designated school sections upon survey thereof vests in a State, is to be determined as of the date of the acceptance of the plat by the Commissioner of the General Land Office, and not the date of its approval by the surveyor general. 49–341

9. The grant to the State of New Mexico of certain designated sections of the public lands for school purposes embodied in the enabling act of June 20, 1910, became effective only upon and by force of the proclamation of admission of the State into the Union on January 6, 1912. 48–561

10. The grant to New Mexico of additional school lands, sections 2 and 32, by section 6 of the act of June 20, 1910, took effect on January 6, 1912, the date on which the State was admitted into the Union, and to except lands therefrom, on account of their known value for coal, the determination of their character must be made as of the latter date. 48–11

11. It is not essential in order to declare a tract of land to be mineral in character that actual notice of the existence of mineral deposits be brought home to the interested party, if the physical facts are sufficient to charge the public generally with the knowledge of the presence of minerals. 48–11

12. Where a township plat has been superseded by a corrected plat and there is a variance as to the acreage shown upon those plats in certain designated sections granted to a State for school purposes, a determination of the measure of the grant in those sections will be made in accordance with the plat subsisting at the date of the grant. 50–147

13. Title to lands granted for school purposes does not pass to the State until identified by survey, and if at that time included in a reservation, title does not pass until the reservation is vacated and the land restored to the public domain, prior to which event the right of the State is merely expectant, or inchoate, and it has no right or title to assign or convey. 41–259

14. Settlement upon a school section after survey in the field does not affect the right of the State under its school grant. 44–215

15. No rights are acquired by settlement upon school sections subsequent to survey in the field. 44–414

16. A mineral claimant who does not assert any discovery by him of mineral, at or prior to the approval

of a Government survey, on land granted to a State for school purposes, is not entitled to a hearing to prove the character of the land upon a mere showing that casual prospecting had been done by others from time to time prior to and since its survey. 48–114

17. The presumption arises that lands granted to a State for school purposes are of the character contemplated by the grant, in so far as minerals are concerned, if at the time of their identification by the lines of an approved public survey there were no mining claims of record and the returns of the surveyor did not show the lands to be mineral in character. 48–114

18. An act of the State of California permitting mineral prospecting and location under the United States mining laws upon granted school lands in place, after acquirement of title by the State, does not constitute a waiver of the right of the State to claim the benefit of the presumption that the land was nonmineral in character at the time that the grant took effect. 48–114

19. An act of the State of California declaring that granted school lands in place, in which after acquirement of title by the State valuable mineral deposits are found, shall be free and open to prospecting and acquisition under the United States mining laws, does not revest title in the United States or confer jurisdiction upon the Land Department to dispose of them, prior to the approval of a selection of other lands in lieu thereof filed by the State upon a tender of the base. 48–114

20. Where a tract of land has passed to a State under its school grant, the Land Department is without authority to accept a reconveyance thereof from the State with a view to permitting an individual to acquire title thereto under the public-land laws. 44–489

21. Sections 16 and 36 in the Territory, now State, of New Mexico, surveyed prior to the act of June 21, 1898, making a grant of said sections to the Territory for the support of common schools, passed to the Territory at the date of the act, unless at that time reserved, otherwise disposed of, or known to be mineral. 44–460

22. Section 6 of the New Mexico enabling act of June 20, 1910, operates to reserve sections 2, 16, 32, and 36, within national forests, for the benefit of the State, where not otherwise appropriated at the date of the passage of that act, the vesting of title under that act being postponed until such lands shall be restored to the public domain; and upon restoration of any such sections the inchoate right of the State, which was imminent over the lands, immediately attaches and becomes effective and prevents the attachment of any right under a settlement initiated after the date of the act. 44–137

23. Possession and improvement of a tract of unsurveyed land under the act of March 28, 1908, prior to and at the time of survey, by one who at the date of identification of the land by survey was disqualified to make desert entry thereof, do not except the tract from the school grant to the State. 45–471

24. Upon elimination from a national forest of surveyed school lands, the right of the State under its grant attaches immediately and is paramount to an application to make entry, tendered by the applicant for the listing after the land has been opened to entry, which opening is subsequent in time to the elimination of the land from the national forest. 45–593

25. One who successfully contests the *prima facie* claim of the State to a tract in a school section, upon the ground of the known coal character of the land at the date of the school land grant, gains thereby no preference right to make coal entry for the tract involved. 47–58

26. State school lands sold in 1917 and 1918 do not fall within the

language of the proviso to article 4 of the supplemental contract entered into by the Secretary of the Interior with the Belle Fourche Valley Water Users Association on January 24, 1911, as they are neither public lands entered nor private lands contracted prior thereto; and the purchasers from the State are accordingly bound by the construction charge in effect at the time water-right application is filed. 47–102

27. Neither the act of February 28, 1891, which granted to the State of California the option to waive its right to such school sections in place as should be discovered subsequently to the approval of the official survey to be of mineral character, and take lands in lieu thereof, nor the legislative act of that State of April 1, 1897, permitting mineral prospecting and location of mining claims thereupon, revested the United States with title to those lands, but merely authorized a right of exchange, prior to the exercise and acceptance of which the Government is without authority to make disposition thereof. 48–418

28. Lands within a school section in the State of California, which were found to be of mineral character subsequently to the approval of the official survey, are not subject to mineral entry under the United States mining laws unless and until exchange thereof for other lands has been perfected pursuant to the act of February 28, 1891, and where a mineral entry for such lands has been canceled because invalid when made, a reinstatement thereof after an exchange of the lands has been approved will not be permitted to the prejudice of an intervening adverse claim, if the claimant submitted without protest to the cancellation of the entry and failed to renew his claim after title revested in the United States. 48–418

29. Where the school grant to the State of Utah under section 6 of the enabling act of July 16, 1894, presumptively attached on January 4, 1896, the date of its admission, as to lands then identified by the Government survey, and the question of the vesting of title is subsequently put in issue on the ground that the land contains deposits of coal, the burden of proof is on the contestant to show that the land was of known coal character on the latter date. 49–212

30. In order to except lands from the school grant to the State of Utah, it must be shown that at the date the grant presumptively attached the known conditions were such as to engender the belief that the land contained coal of such quality and quantity as would render its extraction profitable and justify expenditures to that end. 49–212

31. In determining whether or not a tract of public land was known to be valuable for its coal deposits at the date of the admission of Utah to statehood, proof of its character is not limited to actual discoveries within its boundaries, but whatever is relevant and bears in any degree on the question of its known character at that time, such as adjacent disclosures and other surrounding or external conditions, is admissible as evidence. 49–212

32. A coal application filed under section 2347, Revised Statutes, for lands, the presumptive title to which has been at all times since statehood and still is in the State of Utah under its school land grant, is merely an application to contest the right of the State to the lands in question, and does not confer upon the applicant any right which, upon a decision against the State, can constitute a valid claim within the purview of the saving clause of the act of February 25, 1920. 49–213

33. A reclamation withdrawal existent at the date of the grant made to the State of Arizona by section 24 of the act of June 20, 1910, of certain designated sections of public lands for school purposes, does not defeat the operation of the grant, as to lands subsequently restored from the with-

drawal, but the right of the State attaches to surveyed lands within the specified sections immediately upon their restoration from the withdrawal, if the State has not selected indemnity therefor. 49–611

34. The right of the State of Arizona which attaches to surveyed school lands immediately upon their restoration from a reclamation withdrawal, can not be defeated by the initiation of a desert-land claim subsequently to the date of the restoration. 49–611

35. The grant of certain specified sections of public lands for school purposes made to the State of New Mexico by its enabling act excepted mineral lands, and where, prior to its admission, granted sections had been classified as coal and offered for sale at a fixed price, those sections were *prima facie* not subject to the operation of the grant, but the burden of proof was cast upon the State to establish that the classification was erroneous. 50–219

36. The Land Department will afford a State an opportunity to protest against any proposed disposal of lands within granted school sections which are alleged not to have passed under its school grant by reason of their mineral character. 50–219

37. The language used in the proviso to section 6 of the enabling act of July 16, 1894, which excepted from the grant of public lands to the State of Utah for school purposes, those lands embraced in "Indian, military, or other reservation of any character," is sufficient to show an intention of including within its exception areas withdrawn for their prospective oil and gas values. 50–231

38. Where mineral lands are excepted from a grant of public lands for school purposes, a petroleum withdrawal prior to survey has the effect of stamping the lands as *prima facie* mineral in character and, upon the approval of the survey, suspends the operation of the grant. 50–231

39. A petroleum withdrawal prior to survey of lands which, upon survey, are identified as lands granted to a State for school purposes, if nonmineral, has the effect of casting the burden of proof upon the State to produce evidence sufficiently convincing to warrant their nonmineral classification. 50–231

40. Where objection is made to a ruling by the Commissioner of the General Land Office that a petroleum withdrawal of lands which, upon subsequent survey, are found to be school sections, is sufficient to prevent the title from passing to the State upon the approval of the survey, determination of that point in order to fix the burden of proof and the necessity for a hearing should be insisted upon by the State before a hearing is had, otherwise proceeding with the hearing will be construed as an election to accept the ruling. 50–231

41. When the final act is performed which, under the law, would permit a school grant to attach, and there has been no reservation or classification of the land as mineral, the presumption arises that it became the property of the State under its grant. 50–516

42. The fact that at the date of the approval of the survey land within a designated school section was known to be coal in character does not, of itself, destroy the presumption that the land passed to the State under its school-land grant, and, to overcome that presumption, the Government must assume and sustain the burden of proof. 50–516

43. Mineral lands do not pass to the State of Wyoming under its school grant, either by virtue of the act of July 10, 1890 (26 Stat. 222, 224), or the act of February 28, 1891 (26 Stat. 796.) 46–34

44. The case of Cosmos Exploration Co. *v.* Gray Eagle Oil Co. (190 U. S. 301), was not overruled or modified by the decision in the case of Daniels *v.* Wagner (237 U. S. 547). 46–35

45. Until approval by the Secretary of the Interior, no equitable title or vested right accrues under an indemnity school-land selection, notwithstanding performance of all that the law and regulations require of the selector; and the Secretary is without authority to approve a selection of mineral land. 46–34

46. Where the granting statute specifically directs the manner in which a class of State selections shall be made and approved, disposition thereof in any other manner is precluded. 46–185

47. Public lands granted to the State of Utah by section 12 of the act of July 16, 1894, are not affected by the provisions of section 2449, United States Revised Statutes. 46–185

48. An application to make entry of land embraced in a State selection confers upon the applicant no right to attack it either before the Land Department or the courts; and there being no statutory right of contest against a State selection, no preference right of entry inures to one who procures its cancellation. 46–185

49. A State selection of record, even though unapproved and invalid, bars allowance of an application to make entry of the land selected. 46–185

50. Only upon approval of a State selection does the doctrine of relation become operative, and under it the right of the State relates back to the date of filing of the selection and is superior to claims asserted subsequent to the filing of the selection and prior to its approval. 46–218

51. As the granting act of June 16, 1880, expressly provides that selections thereunder shall be duly certified to the State by the Commissioner of the General Land Office and "approved by the Secretary of the Interior," such approval operates to pass the fee title to the State; thereafter the jurisdiction of the Government is at an end, and so long as that certification and approval are outstanding it is without power to allow any application for or entry of the land involved. 47–152

52. As approval by the Secretary of the Interior, upon due certification, of a selection made by the State of Nevada pursuant to the act of June 16, 1880, operates to pass the fee title, the land involved is not thereafter within the jurisdiction of the United States. 47–156

53. An act of the State of Nevada, permitting mineral prospecting and location of mining claims upon lands duly certified to the State, can not have the effect of reinvesting the United States with legal title to lands already conveyed, in the absence of proper legislation by Congress authorizing the revesting of title. 47–156

54. Directions given that suitable instructions be prepared providing for a general and uniform rule relative to publication of notice in the matter of State selections for educational and other purposes, such as now governs the publication of final proof notices. 47–255

55. Land embraced in subsisting entries at the date of the granting act and at the time of the admission of the State of Utah into the Union is excepted from the grant of lands in place, and the subsequent cancellation of such entries does not cause the grant to attach; but the land becomes a part of the public domain subject to disposition as other public lands. 47–359

56. A withdrawal of public lands for power-site purposes under the provisions of the act of June 25, 1910, is a reservation within the meaning of the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes. 47–363

57. Where a school grant excepts lands known to be mineral in character at the date of the admission of the State, and it is established that the lands contain mineral deposits, evidence as to the existence of mining locations prior to the State's admission tends strongly to support the con-

clusion that the land was regarded as mineral in the community at that time. 51–432

58. Instructions of October 15, 1919, amending rules 9 and 11 of regulations of June 23, 1910, governing selections under grants to State for educational and other purposes. (Circular No. 659.) 47–257

II. Indemnity

59. Instructions of March 23, 1915, under act of February 14, 1913, concerning selections of indemnity school lands within Standing Rock Indian Reservation. 44–43

60. Instructions of May 20, 1920, as to substitution of new bases for indemnity selections. 47–398

61. A State will not be permitted to make a second school indemnity selection during the pendency of a prior selection based upon the same loss, and thus segregate two tracts upon a single base. 41–135

62. By an erroneous attempt to sell lands in a school section while embraced in a reservation, the State does not, where it subsequently clears the apparent cloud on the title, forfeit its right to make indemnity selection of other lands in lieu thereof; but in such case it will be required to show that the land is in the same condition as it was at the date of its attempted conveyance. 41–259

63. Sections 13, 16, 33, and 36 in the so-called pasture and wood reserves are subject to disposition for the benefit of the Indians under the provisions of the act of Congress of March 3, 1911, and did not pass to the State of Oklahoma under its school grant, which must be satisfied, so far as these lands are concerned, under the indemnity provisions of the act of June 6, 1900. 41–433

64. No title is acquired under or by virtue of a school indemnity selection until the same has been approved by the Secretary of the Interior; and where the lands embraced in a selection are classified as oil lands and withdrawn under the provisions of the act of June 25, 1910, the Secretary is without authority to approve the selection in the face of such withdrawal; but it should be rejected, without prejudice to the right of the State to submit showing with a view to securing reclassification of the lands and to apply anew therefor in event of their restoration. 41–592

65. Where land within a national forest offered as base for a school indemnity selection is prior to approval of the selection eliminated from the forest, the State is not entitled to have the selection consummated, but takes title to the base land under the grant. 44–468

66. Indemnity school-land selections are not excepted from the force and effect of the act of June 25, 1910; and a power-site withdrawal under that act is effective upon lands embraced in an unapproved school indemnity selection, notwithstanding the withdrawal was made subsequent to the filing of the selection. 44–118

67. No title is acquired under or by virtue of a school indemnity selection until the same has been approved by the Secretary of the Interior, and where the selected lands are classified as petroleum in character, withdrawn, and placed within a petroleum reserve, the Secretary is without authority to approve the selection for unconditional patent. 44–127

68. Title does not vest in the State under a school indemnity selection until the selection has been duly approved; and a discovery of mineral prior to such approval will defeat the selection. 45–590

69. Where a State, in an indemnity school-land selection, tenders lands in a national forest which constitute a valid base, and said lands are subsequently eliminated from the forest, the substitution of new base will be permitted. Robinson *v.* Lundrigan (227 U. S. 173) distinguished. 45–644

70. A discovery of a valuable mineral deposit subsequent to the tender

of an indemnity school-land selection but prior to approval thereof by the Secretary of the Interior defeats the selection. 46–34

71. The provision in the act of February 28, 1891, *supra*, that a State or Territory may select other sections of public land in lieu of school sections otherwise disposed of by the General Government, and that "such selection shall be a waiver of its right to said sections," does not warrant a construction that such "waiver" of the base lands is tantamount to the vesting of fee simple in the United States to the lands so waived, prior to the approval of the selection by the department. 46–218

72. The department's approval and certification of lieu lands selected by a State are necessary prerequisites to the vesting of title to such lands in the State, and conversely, title to base lands tendered by the State in support of a lieu selection does not vest in the United States until approval of the selection, there being, in fact, no selection until the approval is executed on the part of the department. 46–218

73. Administrative order of April 23, 1921, modifying administrative ruling of July 15, 1914, and overruling departmental decision in conflict with Supreme Court decision in certain cases involving withdrawals of lands in school indemnity selections. 48–97

74. A vested right attaches under a State indemnity school selection as soon as the selector has done everything required of him preliminary to the passing of title, and where the question of the mineral or nonmineral character of the land subsequently becomes involved, the adjudication of that issue is to be governed by the known character of the land as of the date of the completion of the selection. 48–384

75. A first-form withdrawal under the reclamation act does not defeat the equitable title of the selector acquired under an indemnity school selection if the selection was legal and completed prior to the withdrawal. 48–614

76. A vested right does not attach under an indemnity school selection until all of the requirements of the law and the authoritative regulations thereunder have been fulfilled, and where the land is withdrawn and included within a petroleum reserve before such fulfillment, the selector must either agree to accept a restricted patent as provided by the act of July 17, 1914, or assume the burden of proof and show that the land is in fact nonmineral in character. 49–436

77. Where an indemnity school selection, imperfect when filed, is perfected at some subsequent time, the selector can not invoke the doctrine of relation with the view to creating a complete equitable title as of the date of the filing of the selection, and thereby defeat the operation of an intervening withdrawal. 49–436

78. Under the express terms of the act of February 28, 1891, a selection of lands in lieu of sections 16 and 36 lost to the State's school grant by reason of being embraced in a reservation of the United States "may not be made within the boundaries of said reservation," notwithstanding the State may have applied for survey of the township within which the selected lands are located, under the act of August 18, 1894, prior to their inclusion in the reservation. 42–118

79. Where the State of California made school indemnity selection in lieu of a tract supposed to be lost to its grant by reason of inclusion within the outboundaries of a Mexican grant, but which upon survey was excluded from such grant, the subsequent erroneous approval of the selection and certification of the land to the State, after sale of the base by the State to a *bona fide* purchaser, in no wise affected the right of such purchaser nor revested the United States with title to the base land; and a homestead entry allowed therefor is void, and

upon protest by the purchaser from the State will be canceled. 42–296

80. The legal title to a tract of school land relinquished as base for indemnity selection does not revest in the United States until the selection is approved, and prior to such approval the relinquished land is not subject to entry, selection, or other appropriation under the public land laws; but where settlement was made upon land so relinquished prior to approval of the selection based thereon, on the faith of statements by the State land commissioner that the State did not claim the land, and application to enter filed by the settler, such application should not be rejected outright but held and considered in connection with the selection, and if the selection be approved, the settlement right should be recognized and protected. 42–538

81. Whatever doubt and uncertainty existed concerning departmental decisions in Thorpe et al. *v.* State of Idaho (35 L. D. 640; 36 L. D. 479) and Williams *v.* State of Idaho (36 L. D. 20, 481), respecting the right of the State of Idaho to select indemnity in lieu of school sections within the Coeur d'Alene Indian Reservation, because of the decision of the supreme court of that State in Balderston *v.* Brady et al. (107 Pac. Rep. 493), holding that school sections falling within Indian and other reservations were not a valid basis for indemnity, having been removed by enactments of the State legislature of February 8 and March 4, 1911 (Laws of Idaho, 1911, pp. 16, 85), and the later decision of the supreme court of the State in Rogers *v.* Hawley et al. (115 Pac. Rep. 687, 692), said departmental decisions are relieved from suspension and will be carried into effect. 42–15

82. Where part of the land embraced in a school indemnity selection is within a power-site or other withdrawal the selection may be divided and approved as to the land not in conflict upon designation of proper base for such portion. 44–119

83. The purpose of the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes, was to place all the States and Territories containing public lands, and to which grants had been made for school purposes, in a similar position, alike entitled to the benefits and subject to the conditions imposed by said act. 44–414

84. Where homestead entry was allowed for a tract of land within a school section, in the belief that it was excepted from the school grant by reason of a claimed settlement by the entryman, and the State thereupon filed an indemnity selection based thereon, and it was subsequently found that the claimed settlement was not sufficient to except the tract from the grant, the indemnity selection may nevertheless be approved where the lands have been reported and withdrawn as valuable for coal. 44–348

85. No settlement, residence, or improvement is required under a selection made under the act of July 1, 1898, based upon a settlement claim or entry in conflict with the Northern Pacific grant and adjusted under that act, where the person making the selection had fully complied with the requirements of the homestead law upon the land in conflict; and such selection will defeat a subsequent school indemnity selection of the same land by the State. 44–26

86. A mere settlement upon public land is not such an appropriation as will prevent school indemnity selection thereof; and where the settler subsequently abandons his claim, the pending school indemnity selection attaches. 45–184

87. While the Commissioner of the General Land Office may, in his discretion, avail himself of the aid of a contestant to determine the validity or invalidity of a school indemnity selection, his refusal to accept such aid is not the denial of a legal right, and his exercise of discretion in such matter will not be controlled by the

department unless abuse thereof is clearly apparent. 45–458

88. A tract of land embraced in a public water reserve under the act of June 25, 1910, is not subject to school indemnity selection by the State. 45–551

89. A tract of land situated in a large area of public grazing lands, and which is chiefly valuable as a watering place for stock, by reason of a spring located thereon, should be retained in public ownership, subject to the possible granting of a right of way for the construction of a reservoir for stock-watering purposes under the act of January 13, 1897. 45–551

90. Certain forms of disposition and certain classes of pending claims are specifically excepted from the force and effect of any withdrawal under the act of June 25, 1910 (36 Stat. 847), but a school-land indemnity selection is not so excepted. 46–34

91. A school indemnity selection *prima facie* valid and intact of record segregates the land involved. 46–109

92. The rule of approximation is administrative merely, and will not be applied to State school indemnity selections. 46–374

94. By the terms of section 2275 of the Revised Statutes as amended by the act of February 28, 1891, where unsurveyed school sections are embraced within a reservation, it is unnecessary that they be identified by the public survey as a prerequisite to acceptability as base for lieu selection by the State, protraction or other method approved by the Secretary of the Interior sufficing. 46–396

94. Where at the date of filing a school indemnity selection it appears that the tract involved is subject thereto, a prior settlement long abandoned, even though because of erroneous advice, is not such an appropriation as will prevent the selection from attaching, nor afford any valid ground for the former settler's relief under a homestead application subsequently filed. 46–494

95. A company which, under claim of right and in privity with the title asserted by the State, in good faith takes possession of and makes valuable improvements upon a portion of a school section thereafter lost to the State because of adjudication that it was known coal land at the date of the school grant, may be protected by according to the State opportunity to select the land, exclusive of the coal deposits, under the act of April 30, 1912, for the benefit of the company. 47–58

96. A claimant who in good faith reclaims, under authority of the act of March 28, 1908, a tract of unsurveyed desert land which, upon survey, falls within a section designated under the school-land grant to the State of Montana, acquires, by reason of its indemnity provision, a right to make entry superior to any claim of the State under said grant. 48–103

97. A State is not entitled under sections 2275 and 2276, Revised Statutes, as amended by the act of February 28, 1891, which authorize selections to compensate deficiencies in school sections, to select indemnity for an alleged loss or deficiency of school lands in a fractional unsurveyed township. 48–138

98. In the adjustment of the school-land grants of the several States, the provisions of section 2275, Revised Statutes, as amended, which imposes the duty upon the Secretary of the Interior to ascertain by protraction or otherwise, without waiting the extension of the public surveys, the number of townships that will be included within an Indian, military, or other reservation in order that indemnity may be allowed for the specified school sections embraced therein, does not confer any authority to make protractions for the purpose of determining an alleged loss of school lands in an unsurveyed township situated within the unreserved and unappropriated public domain. 48–139

99. The right initiated by the filing of a State indemnity school selection

must be treated as an abandoned right, and one not subject to reinstatement or amendment, if, after cancellation of the selection for reason of some defect, the State, through its laches by failure to avail itself of the privilege accorded by the governing regulations, permitted an adverse claim to intervene, notwithstanding the fact that by a subsequent opinion of the United States Supreme Court in a similar but separate and distinct case, it might have acquired an equitable right or title under its original selection. 48–192

100. A proceeding relating to the reformation of title papers is governed by principles of equity, and a selector of indemnity school land, who, after having done everything necessary to acquire title, afterwards files a waiver of the oil and gas deposits in accordance with a requirement of the Land Department then in force, and accepts a restricted patent, will not be granted an unrestricted patent after it has been judicially determined, in an action involving similar facts, but to which the patentee was not a party, that the ruling under which the requirement was made was erroneous. 48–384

101. The act of August 18, 1894, authorizing the survey of public lands on the application of a State, grants the State a preference right of selection for "60 days from the date of the filing of the township plat of survey," and the governor of the State has no authority to limit the preference right period so fixed by the statute; and the fact that in a published notice under that act the governor claimed a preference right on behalf of the State for "60 days after the survey is approved" in no wise affects the preference right of the State to make selection at any time within 60 days from the filing of the township plat. 44–327

102. A State secures no preference right of selection by virtue of an application for survey under the act of August 18, 1894, until withdrawal is made for its benefit; and a settlement subsequent to an application for survey and prior to such withdrawal defeats any right of selection on the part of the State. 44–345

103. Where the possible mineral deposits, oil, or gas, in public lands embraced in an indemnity school selection, have been waived by the selector and a restricted certificate of title has been accepted under the provisions of the act of July 17, 1914, the State is estopped from further claim and the case is *res adjudicata*, notwithstanding that the mineral value of the land as of the date when the selection was completed was not established prior to the waiver and election to take a restricted patent. 48–387

104. Defects in an indemnity school selection may be cured by an amendatory selection prior to the intervening of adverse rights, and where the defects are cured before the lands are included within a forest withdrawal, the selection is to be treated as within the purview of a proviso which excepts from the operation of the withdrawal "any lawful entry, filing, selection, or settlement" made and maintained in compliance with law, notwithstanding that the filings had been suspended because of a controversy with the State concerning the validity of its indemnity base. 48–614

105. Section 2275, Revised Statutes, as amended, which imposes upon the Secretary of the Interior, in the adjustment of the school land grants of the several States, the duty to ascertain by protraction or otherwise, without awaiting the extension of the public serveys, the number of townships that will be included within an Indian, military, or other reservation, in order that indemnity may be allowed for the specified school sections embraced therein, has reference only to lands in place, and no authority is conferred thereby to determine by protractions alleged losses of school lands within such reservations occasioned by reason of natural deficiency or loss. 49–314

106. The designation by a State of lands within a specific school section as the basis of its selection of other lands as indemnity, and its failure to oppose the entry and patenting of the lands so assigned estop it from subsequently asserting title to the base lands. 49–341

107. While a State is not entitled to indemnity under its school land grant because the lands in place are of an inferior quality, yet where its place lands are "hedged in," even by subsequent acts of the Federal Government, so that they become practically useless for school purposes, the right of the State to select indemnity lands elsewhere arises. 49–377

108. The term "indemnity" as used in the statutes granting lands to the States for school purposes implies compensation for losses actually sustained by failure to receive designated sections in place, and not a right to select lands elsewhere because those in place happen to be of inferior quality. 49–377

109. An indemnity school selection, canceled upon the neglect of the selector to comply with the law and governing regulations, will not be reinstated on the ground that at the time of its cancellation the selector was entitled to receive at least a restricted patent, if, as the result of that neglect, another was permitted to acquire an adverse claim and make substantial expenditures of time and money in placing valuable improvements upon the land. 49–436

110. Where a State, the real party in interest, waives its right to apply for a hearing and concedes the contention of the United States that the lands selected by it under its school indemnity grant are not subject to such selection because of their mineral character, a lessee from the State, between whom and the United States there is no privity of interest, is not entitled to intervene and demand a hearing involving the character of the lands. 49–531

111. Land embraced in a school indemnity selection is not subject to location as a building-stone placer under the act of August 4, 1892. 42–401

112. In case of refusal of a State, after notice from the Commissioner of the General Land Office, to accept surface title under the act of June 22, 1910, for a school indemnity selection of withdrawn land, subsequently classified as coal, or to relinquish the selected land, the selection should be rejected, with right of appeal. 42–311

113. The offering by a State of school lands classified as coal as base for indemnity selections will be considered as a waiver of the State's claim to said tracts under its school grant. 44–215

114. The confirmation of indemnity school selections to the State of California by sections 1 and 2 of the act of March 1, 1877, is limited to selections certified to the State prior to the date of the act. 42–296

115. Where the State of California, after the approval of a school indemnity selection, sold and patented to another the lands assigned as base for such selection, the State should be given opportunity to protect its transferee by selection, on good and sufficient base, of the land so erroneously sold and patented; and in case the State should fail to make such selection, the transferee should be given opportunity to make appropriate entry for the land so purchased from the State. 43–470

116. The Land Department is without authority to issue limited patent under the act of July 17, 1914, for lands embraced in a school indemnity selection by the State of California, upon waiver by the transferee of the State of all right to the oil deposits therein, unless the State shall have first consented to the issuance of such restricted patent. 44–27

117. In view of the act of July 17, 1914, providing for the agricultural entry of lands withdrawn, classified, or reported as containing phosphate,

nitrate, potash, oil, gas, or asphaltic minerals, and the act of the Legislature of the State of California of April 14, 1915, empowering the surveyor general of the State to accept the benefits of said act, with a reservation to the United States of all deposits on account of which the lands were withdrawn, classified, or reported as being valuable, school indemnity selections by said State embracing lands subsequently so withdrawn, classified, or reported, may be approved, subject to the provisions of said act, notwithstanding such withdrawal, classification, or report. 44–120

118. A desert entry of unsurveyed land, made at a time when the desert-land law permitted entries of unsurveyed lands, is a disposition of the land within the meaning of section 4 of the Idaho admission act of July 3, 1890, and the act of February 28, 1891, providing indemnity for sections 16 and 36, granted for school purposes, where said sections or parts thereof have been "otherwise disposed of." 44–347

119. A homestead entry allowed for lands withdrawn and surveyed upon the application of the State of Idaho under the act of August 18, 1894, prior to expiration of the 60-day preference right period accorded the State by that act within which to make selection, attaches at the expiration of that period in the absence of a valid selection of the lands by the State; and the subsequent ratification by the State legislature of an invalid selection made within that period has no retroactive effect to impair the rights of the entryman. 44–448

120. Under sections 2275 and 2276, Revised Statutes, as amended by the act of February 28, 1891 (26 Stat. 796), and the enabling act of June 20, 1910 (36 Stat. 557, 565), the State of New Mexico may waive its right to granted school lands in place, where, after acquirement of title by the State, said lands are placed in a national forest. 46–217

121. Certain unsurveyed lands in New Mexico reserved for Indian purposes, and upon which were located several fourth section Indian allotments, were tendered by the State as base for a lieu selection. *Held*, That such lands were acceptable base, although it had not been determined whether they would be permanently reserved for Indian purposes. 46–396

122. A selection by the State of North Dakota under the act of March 2, 1907, in lieu of lands embraced in a homestead entry erroneously allowed for part of a school section in the Fort Rice abandoned military reservation which had passed to the State, constitutes a waiver of all right of the State to the lands assigned as base, and no rights under the school grant reattach to said lands in event of cancellation of the homestead entry. 44–390

123. Under the grant for school purposes made to the State of Montana by the act of February 22, 1889, the State takes no vested interest in or title to any particular tract until it is identified by survey, and where at that time covered by a valid settlement claim the grant does not attach, and the State's only recourse is to the indemnity provisions of the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes. 44–414

124. Section 16 of the act of June 4, 1920, which granted to the State of Montana, for common-school purposes, two designated sections of nonmineral and nontimbered lands in each township in the Crow Indian Reservation, for which the State had not previously received indemnity, clearly intended that where the lands in place, or portions thereof, have been allotted or are mineral or timbered, the State shall be entitled to select other unoccupied, nonmineral, and nontimbered lands in said reservation to the extent of such deficiencies, not to exceed, however, two sections in any one township. 48–512

125. Where the State of Montana is unable to obtain in any township within the Crow Indian Reservation, the quantity of land, in place or as indemnity, granted to it for common-school purposes by section 16 of the act of June 4, 1920, it is entitled, under the provisions of the acts of February 22, 1889, and February 28, 1891, to select other lands subject to selection, outside of said reservation, in quantity equal to such loss. 48–512

126. There is no provision of law under which the State of Oklahoma is authorized to select indemnity for sections 13 and 33 lost to its school land grant by reason of being otherwise reserved or disposed of. 44–335

SCHOOL TEACHERS

See RESIDENCE, 45–190.

SCRIP

See HOMESTEAD, XII; WARRANTS, 41–34; 42–520; 50–438, 486.

1. Supreme Court scrip may not be accepted in payment for lands under the timber and stone act. 44–54

2. A location of Valentine scrip on unsurveyed land becomes fixed and certain upon identification of the selected land by survey, and thereafter the locator can not abandon the location and have the scrip returned to him. 44–548

3. Valentine scrip may be located upon unsurveyed lands, and the locator has three months from the filing of the township plat of survey within which to adjust the location to legal subdivisions. 45–469

4. A location of Valentine scrip may embrace noncontiguous tracts. 45–469

5. The act of April 5, 1872, which authorizes the location of Valentine scrip upon unoccupied and unappropriated nonmineral public lands has no application to lands in the bed of Red River, Okla. 51–89

6. The location of Valentine scrip upon unsurveyed public land in conformity with the law and departmental regulations is such an appropriation of the land as can not be defeated by a subsequent reclamation withdrawal, notwithstanding that the selection had not been adjusted to an official survey, and the selector can not thereafter be deprived of his rights thus acquired except in the manner prescribed by the reclamation act. 51–454

7. In the administration of the public-land system it is a fundamental principle that the settler shall be preferred over claimants who seek to assert scrip or other rights to the public domain, and in pursuance of this principle the department will give equitable consideration to asserted settlement claims, in the presence of a scrip application for the land by one without claim to equitable consideration. 45–583

8. Where an application for the location of Sioux half-breed scrip recited that such scrip was located on the land described "in satisfaction of the attached certificate or scrip," and the patent issued recited that the certificate was surrendered "in full satisfaction" for the land described, the locator has waived his right, if any existed, to any excess representing the difference in quantity between the land received and that called for by the scrip. 46–29

9. There is no provision of law specifically authorizing or requiring the Secretary of the Interior to accept the surrender of Sioux half-breed scrip and issue new scrip of lesser denomination in lieu thereof; and such subdivision and reissue will be allowed, if at all, only in cases where it appears from the records of the General Land Office that the scrip is free from all conflicting claims. 45–49

10. Neither the law nor the practice of the department authorizes the relocation of Sioux half-breed scrip to the extent of the excess of land represented by such scrip over that received under a location thereof. 46–29

11. The provision of the act of December 28, 1876, which directed the issuance of a certificate of location to the legal representatives of Samuel Ware, authorizing them to locate said certificate on "any land in what was Missouri Territory, subject to sale," contemplated that "Missouri Territory" was to be restricted to the Territory as organized into counties; that is, to the area now embraced within the States of Arkansas and Missouri. 49–146

SEARLES LAKE, CALIF., LANDS

See POTASH LANDS.

SECOND ENTRY

See ASSIGNMENT, 41–9; DESERT LANDS, 41–373; HOMESTEAD, XIII.

SECRETARY OF THE INTERIOR

See EQUITABLE ADJUDICATION, 49–323, 561; INDIAN LANDS, 46–457; 48–435, 455, 472, 475, 479, 608; 49–370, 414; JURISDICTION; LAND DEPARTMENT, 46–201; MANDAMUS, 45–649; 46–191; OIL, GAS, ETC., LANDS, 48–623; 49–578, 613, 625; PATENT, 49–548; SUPERVISORY AUTHORITY OF SECRETARY, 46–279; 48–582; 50–175, 223, 438, 595.

1. A classification of lands as coal is subject to supervision and review by the Secretary of the Interior. 45–494

2. The supervisory authority of the department may properly be invoked by *certiorari* where a substantial failure of justice, due to action taken by a subordinate tribunal, would otherwise occur. 46–183

3. The Secretary of the Interior may delegate to the First Assistant Secretary and to the Assistant Secretary not merely administrative or ministerial duties, but also the duty to act judicially in review of the actions of the head of a bureau of his department, and in matters requiring the exercise of such delegated authority, their powers are coordinate and concurrent with those of the Secretary himself. 50–149

4. In issuing instructions prescribing the duties of an officer of his department, pursuant to an act of Congress creating the office, the Secretary of the Interior may include duties fixed by a Territorial legislature, but in doing so he can not go beyond the intent and purpose of the Federal statute or require the performance of duties not contemplated by it. 50–365

5. It is the statutory duty of the Secretary of the Interior to determine the character of public land as a prerequisite to its disposition and as a determination as to whether it passed under some grant, or, because of its mineral character, it was, under the law, reserved to the United States for other disposition under applicable statutes. 51–141

6. The Secretary of the Interior or Commissioner of the General Land Office, upon discovery that a prior decision rendered by his predecessor was erroneous, unlawful, or unjust, may, on his own motion, review, reconsider, or vacate the same and cause whatever action to be taken with respect to the land as may appear appropriate, provided that jurisdiction thereover still remains in the Land Department. 51–142

SELECTIONS

See FOREST LIEU SELECTION; PATENT, 45–166; 50–572; RAILROAD GRANT, 42–396; 43–159, 302; 45–152; RAILROAD LANDS, 42–553; 48–172; SCHOOL LANDS, 42–118, 296, 311, 538, 401; 45–184, 458, 551, 644, 48–614; 49–341, 436; 50–20, 528; SURVEY, 44–327, 345, 448, 645.

1. Circular of May 22, 1914, governing disposition of applications, filings, and selections for lands opened or restored to entry. 43–254

2. Instructions of April 23, 1921, modifying administrative ruling of July 15, 1914, relative to selections of subsequently withdrawn lands. 48–97

3. Instructions of August 4, 1921, under administrative order of April 23, 1921, with reference to State, railroad, and lieu selections. (Circular No. 768.) 48–172

4. Instructions of July 23, 1924; selections; approved form of nonmineral affidavit; circular of July 9, 1894 (19 L. D. 21), revoked. (Circular No. 956.) 50–587

5. A selection of unsurveyed lands prior to the regulations of November 3, 1909, designating the selected tracts as what will be, when surveyed, technical subdivisions of specified sections, accepted by the officers of the Land Department pursuant to then-existing regulations and practice, confers upon the selector a preference right to the lands upon their identification by actual survey. 43–381

6. The reinstatement of a selection for the exchange of lands under the act of July 1, 1898, which was finally rejected by the Land Department in accordance with the then existing interpretation of the governing laws, will not be allowed on the ground that a different construction was subsequently placed thereupon by the Supreme Court of the United States in a separate and distinct proceeding, involving similar issues, to which the selector was not a party. 48–343

7. A plea alleging that by a clerical inadvertence base tendered in support of a selection for the exchange of lands under the act of July 1, 1898, was, to the detriment of the transferee of the selector, erroneously used as base in support of another selection which had passed to patent, is not a sufficient ground for the allowance of the substitution of new base with the view to the reinstatement of the original selection where the selector has become estopped from demanding the reopening of the proceedings by reason of the doctrine of *res adjudicata*. 48–343

8. A State selection for lands embraced within an oil and gas prospecting permit can not be allowed prior to the cancellation of the permit and notation of its cancellation upon the records of the local land office, except upon the consent of the selector to take subject to the provisions and reservations of the act of July 17, 1914, and to the right of the permittee to the use of the surface in accordance with the provisions of section 29 of the act of February 25, 1920. 49–580

9. Failure of a selector to fulfill, prior to the attachment of a withdrawal, an additional requirement imposed upon him by amended regulations, will not defeat a selection if, at the time of its acceptance by the local officers, there had been full compliance with the law and all existing applicable departmental regulations. 50–9

SERIAL NUMBER REGISTERS

1. Instructions of November 29, 1912, governing inspection of serial number registers in local offices. 41–358

SETTLEMENT

See Forest Lieu Selection, 42–93, 575; 43–331; Oil, Gas, etc., Lands, 50–208, 370, 400; Public Lands, 46–109; 49–549; Railroad Grant, 43–324, 433; 44–26, 73, 449, 505, 506; 47–303, 304; Residence; School Lands, 42–538; 44–26, 215, 348, 414; 45–184; 46–494.

I. Generally

See Section II hereof; Settlers.

1. Instructions of October 8, 1921, relative to prior settlements on lands in stock-driveway withdrawals. (Circular No. 783.) 48–202

2. The fact that occupancy of a settlement claim, lawfully initiated, is interrupted by order of a court does not operate as a termination or abandonment of the settlement claim. 41–430

3. Settlement, residence, and improvement upon a tract of unsurveyed public land confer no such right upon the settler as will prevent withdrawal

thereof by the Government for a public purpose. 41–627

4. Prior to the act of August 9, 1912, a settlement right to unsurveyed land could not attach to more than 160 acres; and one claiming a larger area by virtue of settlement on unsurveyed land prior to that date will be required to elect which part, not exceeding 160 acres, he will retain and enter. 41–316

5. Merely remaining upon public land without *bona fide* cultivation and reasonably diligent effort in the way of improvement, is not the maintenance of such a settlement as the law contemplates shall reserve a tract from other appropriation—especially at the hands of a prior claimant who makes first application to enter the same. 42–113

6. The provision in the act of July 2, 1864, amending the act of July 1, 1862, making a grant to the Central Pacific Railroad Co., that said grant "shall not defeat or impair any * * * homestead * * * or other lawful claim," excepts from the grant a tract of unsurveyed land which at the date of the definite location of the line of road, and down to the date of the filing of the township plat of survey, was successively occupied by qualified homestead settlers intending to make entry; and failure of the settler then occupying the land to assert his claim within three months after the filing of the township plat does not inure to the benefit of the company, but he may assert his claim at any time prior to intervention of an adverse settlement right. 42–589

7. A possessory right is acquired by settlement and entry as against all except the Government; and so long as an entry remains of record no rights can be acquired as against the entryman by settlement upon and occupation of the land, notwithstanding the statutory life of the record entry has expired. 43–344

8. In the administration of the public-land system it is a fundamental principle that the settler shall be preferred over claimants who seek to assert scrip or other rights to the public domain, and in pursuance of this principle the department will give equitable consideration to asserted settlement claims, in the presence of a scrip application for the land by one without claim to equitable consideration. 45–583

9. No rights are acquired by the filing of a timber and stone declaratory statement for land at that time inhabited by a *bona fide* settler, notwithstanding the settler may thereafter abandon the land. 45–184

10. The act of June 11, 1906, specifically declares that upon the listing of lands thereunder by the Secretary of Agriculture the Secretary of the Interior shall declare such lands open to settlement and entry, but that they shall not be subject to settlement and entry until the expiration of 60 days from the filing of the list in the local office; and these requirements are mandatory and jurisdictional and can not be dispensed with by the Land Department. 43–522

11. It is not essential that a settler shall himself mark the boundaries of his claim, and where at the time of settlement the boundaries are plainly marked by a furrow placed there by a prior intending settler who has abandoned all claim thereto, such marking is sufficient to meet the requirements of the act of August 9, 1912. 45–461

12. Where two settlers together claim an entire section, a plain furrow plowed around the outer boundaries of the section is a sufficient marking of the settlement claims within the meaning of the act of August 9, 1912, regardless of whether the dividing line between the claims is marked or not. 45–462

13. A settlement right extends to every part of all legal subdivisions embraced in the claim, and if the settler is compelled to yield a portion of his claim to a prior right, his

claim, even though his settlement was made prior to survey of the land, may be recognized and perfected as to the remainder, notwithstanding the elimination of the land covered by the prior claim renders his claim noncontiguous. 45–94

14. In the exercise of the preference right accorded to settlers under the provisions of the act of June 9, 1916, lands in more than one quarter section may be embraced in the application where there is fencing, improvement, or other evidence of appropriation on each of the tracts sufficient to identify them as being embraced within the settlement. 47–297

15. The preference right accorded by the act of March 16, 1912, to certain settlers, does not contemplate residence, but actual occupation in good faith for town-site purposes; and the operation of a warehouse is occupation within the meaning of that act. 47–323

16. A settler upon unsurveyed lands subsequently included in a national forest may elect to stand upon his rights as a settler and await survey of the township, when he may make entry of 160 acres or less under the general homestead laws, or he may, without waiting for the regular survey, apply for listing of the lands under the act of June 11, 1906; and where he applies for listing under that act, and makes entry of such part of the lands embraced in his settlement as is found to be of the character subject to listing and opened to entry under the act, he thereby waives all claim to the remainder and can not, after survey of the township, make entry under the general homestead law for the entire area covered by his settlement claim. 43–237

17. A *bona fide* settlement maintained upon lands embraced in the intact entry of another attaches *eo instante* upon cancellation of the entry. 46–263

18. While a withdrawal under the act of June 25, 1910, reserves the land from settlement and entry by all except those coming within the proviso thereto, it is not such an "adverse claim" as will defeat an application by one who has maintained settlement to date of filing, even though more than three months have elapsed from the date such settlement right might have have been made of record in the form of an entry. 47–326

19. In the exercise of the preference right accorded to settlers under the provisions of the act of June 9, 1916, lands in more than one quarter section may be embraced in the application where there is fencing, improvement, or other evidence of appropriation on each of the tracts sufficient to identify them as being embraced within the settlement. 47–297

20. Prior lawful occupancy of land within a national forest under a special use permit, by one who, subsequent to enactment of the statute of June 6, 1912, procures the listing and homestead entry thereof under the act of June 11, 1906, is not settlement or residence within the purview of the act of March 4, 1913; and such entry can only be perfected under the provisions of said act of June 6, 1912. 47–173

21. Section 2275, Revised Statutes, as amended by the act of February 28, 1891, excepts from the grant to a State lands in a specified school section embraced within a valid settlement claim made prior to the survey of the lands in the field; and a settler upon such unsurveyed land subsequently designated under the enlarged homestead act is, upon the filing of the plat of survey, entitled to enter as much as 320 acres, notwithstanding that the designation was not made until after the application to enter had been filed. 49–305

22. A settlement upon public lands, withdrawn at date of settlement, is valid against everyone except the United States, and, where one settles, prior to survey, upon withdrawn lands embraced within a school section, the

right of such settler to make entry upon approval of the survey and vacation of the withdrawal is paramount to the right of the State under its school-land grant. 49–644

23. An application for a prospecting permit under section 13 of the act of February 25, 1920, is not an adverse right within the meaning of the law governing settlement claims. 51–38

II. Homestead

See SECTION I hereof; SETTLER.

24. While homestead entrymen have sometimes been allowed credit for constructive residence during absences due to official employment, such absences have never been recognized as residence on mere settlement claims prior to entry. 41–430

25. The preferential right of entry conferred upon homestead settlers by section 3 of the act of May 14, 1880, is a personal privilege which can not be transferred to another; and no such right is acquired by an attempted purchase of a settlement claim as will defeat the rights of an intervening settler. 41–430

26. The right acquired by settlement upon public lands under the act of May 14, 1880, is coextensive with the right of entry conferred by the homestead laws; and a settler upon unsurveyed land subsequently designated under the enlarged homestead act is, upon the filing of the township plat of survey, entitled to make entry of the land embraced in his settlement claim to the full area of 320 acres permitted by the enlarged homestead act. 43–60

27. The rule that protects a settler upon one subdivision of a quarter section against encroachment by others upon any portion of that quarter section, based upon the doctrine of notice imparted by the settlement, has no application where two persons made simultaneous settlements upon the same quarter section at the time of the opening of the land at midnight; but in such case the land may be divided between the parties. 41–173

28. Where an alien settler declared his intention to become a citizen of the United States on the same day he filed his application to make homestead entry for the land settled upon, the Land Department will not inquire as to the particular hour of the day such declaration was made, with a view to ascertaining whether it was prior or subsequent to the hour of filing of the application to enter. 41–316

29. Where by inadvertent action of the Land Department in issuing patent to a railway company for a tract of land embraced in a settlement claim the remaining tracts embraced in the settlement claim are rendered noncontiguous, the settler may be permitted to make entry of the remaining tracts notwithstanding their noncontiguity with the view of submitting the entry to the Board of Equitable Adjudication for confirmation. 41–375

30. A homestead settlement upon lands within the act of March 3, 1883, prior to public offering, though subject to defeasance by public sale, may be recognized as between rival applicants. 42–487

31. A homestead entry made subsequent to the withdrawal or classification of the land for coal, but based upon settlement initiated prior to such withdrawal or classification, is subject to the provisions of the act of June 22, 1910, and the entryman is not, by reason of such prior settlement, entitled to an unrestricted patent under the provisions of the act of March 3, 1909. 42–82

32. A settler upon public land who fails to make entry within three months from the date of settlement, or within three months from the date of the filing of the township plat of survey where the settlement is upon unsurveyed land, forfeits his right in favor of a subsequent settler who asserts his claim in time; but in the absence of an adverse settlement, the

settler loses no rights by failure to assert his claim within three months. 43–173

33. The statute giving a right of entry as against a settler who does not assert his claim within three months after the filing of the township plat of survey applies only to subsequent *settlers*, and does not give a mere applicant, without settlement, any right as against an actual settler, notwithstanding the settler may have failed to assert his claim within the statutory period. 45–211

34. The provision in section 3 of the act of May 14, 1880 (21 Stat. 140), limiting the time within which a settler must assert his claim to three months from the date of settlement when on surveyed land, or three months from the date of filing of the township plat when on unsurveyed land, was intended solely for the protection of the rights of settlers *as among themselves*, and is without application to conflicting claims of a settler and a State or railroad company under its grant. 45–582

35. The preference right of entry accorded to a settler upon public land was not conferred by the act of May 14, 1880, but that act merely placed a limitation as to the time within which a homestead settler must apply to enter the land in order to protect his right against a later settler. 49–305

36. The provision in section 3 of the act of May 14, 1880 (21 Stat. 140), limiting the time within which a settler must assert his claim to three months from the date of settlement when on surveyed land was intended solely for the protection of the rights of settlers as among themselves, and is without application to conflicting claims of a settler and a State under its school grant. 46–263

37. Any question concerning the formality of the assertion and completion of title under settlement claims is a matter between the United States and the settler; and the Land Department is not deprived of its jurisdiction and duty to give equitable consideration to asserted settlement claims by the tender of a scrip application for the land by one having no claim to equitable consideration. 43–173

38. To entitle a claimant to a preference right of entry by reason of prior settlement it is essential that he establish residence on the land claimed within a reasonable time after his first acts of settlement, to the exclusion of a home elsewhere, and such residence must be maintained pending the determination of an adverse claim. 44–543

39. The plowing of a plain furrow around a settlement claim is a sufficient marking thereof within the meaning of the act of August 9, 1912, requiring the exterior boundaries of settlement claims under the enlarged homesteads acts to be "plainly marked." 45–461

40. Persons settling upon public lands with a view to initiating homesteads must give ample notice of the direction and extent of their claims, in order that other intending claimants may avoid initiating claims in conflict therewith. 46–259

41. Where settlement was made upon unsurveyed land, and it developed on survey that part of the land, including the subdivision upon which the building in which the settler resided was located, was embraced in a prior selection by the Northern Pacific Railway Co. under the act of March 2, 1899, such fact does not defeat the settler's rights to the remaining tracts covered by his settlement claim. 45–92

42. To preserve his rights as against an adverse claimant a settler must maintain residence upon the land pending determination of the conflicting claims. 45–586

43. In a controversy involving simultaneous settlement claims the land in conflict should not be awarded to one of the parties merely because he has shown a higher degree of diligence in subsequent residence, cultivation,

and improvement, where both parties in good faith made and have maintained their settlement claims. 45–586

44. One who in good faith makes actual settlement on a 40-acre legal subdivision has an equitable right thereto superior to that of one who claims the same tract by virtue of simultaneous settlement on an adjoining 40-acre legal subdivision in the same technical quarter section. 45–586

45. The Land Department will not undertake to determine the rights acquired by settlement upon unsurveyed lands until such lands become subject to disposition and application is filed to make entry thereof. 45–561

46. Where the rights of two or more persons to a tract of public land are equal, by virtue of simultaneous settlement thereon at a time when the land is subject to settlement, as distinguished from rights acquired merely as the result of *applications* simultaneously filed, the tract should not be disposed of by lot but by an equitable division thereof, saving to each settler, as far as practicable, his improvements. 46–169

47. Homestead improvements and settlement upon any part of a technical quarter section of public land are notice as to all of the land therein comprised, but as to subdivisions outside the technical quarter section settled upon or improved it is necessary to post notices conspicuously upon each smallest legal subdivision, or otherwise mark the same in such manner as to clearly indicate the extent of the claim. 46–259

48. One who abandons settlement on a tract in conflict with the Northern Pacific Railroad Co. under its grant, and thereafter exhausts his homestead right by perfecting an entry under the general provisions of the homestead laws is not entitled to any adjustment under the provisions of the act of July 1, 1898. 47–161

49. Where a homestead settler on unsurveyed land has in good faith fully complied with the requirements of law as to residence, improvement, and cultivation, and is thus entitled to offer proof and receive patent were the land surveyed, he should be permitted, upon survey thereof, to make entry if he show that he was duly qualified to do so at the time he completed compliance, regardless of the fact that he may have later become disqualified through the purchase and ownership of other lands. 47–304

50. If a *bona fide* settler possesses the necessary qualifications at the time of initiation of his homestead claim, the subsequent ownership of more than 160 acres of land prior to time of making record entry does not invalidate such settlement claim. 47–406

51. Homestead settlement on a tract covered by the entry of another confers no right while said entry remains of record, but on its relinquishment the right of the settler attaches at once, and is paramount to the intervening entry of a third person. 46–372

52. The rule that a settler must establish residence upon the land claimed within a reasonable time after initiating settlement and maintain such residence as against a rival settler, has no application in case of a homestead entry based on an application filed prior to the hour of settlement asserted by the conflicting claimant. 47–13

53. Only unoccupied and unimproved public lands are subject to settlement and entry under the homestead laws, and one who, without the consent of the owner of the adjoining surveyed lands, settles upon and occupies unsurveyed lands that were erroneously or fraudulently omitted from survey, and which, at date of said settlement, were in the possession of the latter, does not acquire any preference right of entry; the fact that the initiation of the claim was peaceful and without force is immaterial. 48–1

54. The character of the land governs the area that may be embraced in a settlement claim, and, if the land be subsequently designated under the enlarged homestead act, all rights thereunder relate back to the date of the settlement. 49–305

55. Only unoccupied and unimproved lands of the United States are subject to settlement and entry under the homestead laws, and that principle holds true even when the possession of the prior occupant was wrongful as against the United States. 49–624

56. When a valid settlement precedes a withdrawal, classification or report that the lands are of mineral character, an entry, predicated upon such claim, afterwards allowed pursuant to the act of July 17, 1914, relates back to the date of settlement, and the rights of the entryman under the homestead laws are to be determined accordingly. 50–369

SETTLERS

See Railroad Land; Settlement.

1. Failure of a settler to mark the boundaries of his claim can not be pleaded as a defense by another subsequently entering the land whose claim is based solely upon the priority of his application, where it appears that such application is false in a material particular. 51–42

2. Because of delay on the part of a settler to make entry of public land, the intervening of a mere application for an oil and gas prospecting permit under section 13 of the act of February 25, 1920, does not, in the absence of notice thereof, deprive the entryman of any of his rights under his entry. 51–38

3. While the facts may be such as to constitute a claim against the estate of a deceased settler in favor of one of his children who perfected a homestead entry as his heir, yet they can not alter the established rule of law which requires that the final certificate, when issued, must be to the heirs generally. 51–418

4. Instructions of June 22, 1920, relative to sale of timber and preference rights of settlers on power-site lands; also as to exchanges. 47–411

5. Instructions of May 2, 1919. Settlers on Northern Pacific Railway Co. indemnity lands in Montana. (Circular No. 643.) 47–138

SHALE

See Oil, Gas, etc., Lands, XIV; Railroad Grant, 43–325.

SHELL ROCK

See Mineral Land, 42–401.

SHOSHONE INDIAN LANDS

See Indian Lands, 44–570; Mining Claim, 45–533.

SILETZ INDIAN LANDS

See Indian Lands, 42–244; 43–61, 64, 454.

SIOUX INDIANS

See Indian Lands, 44–188; 45–568; Scrip, 45–49; 46–29.

SMALL HOLDING CLAIMS

See Private Land Claims, 41–69; 42–59; Railroad Lands, 42–553.

1. Instructions of January 24, 1917 (Circular No. 522), under the act of April 28, 1904, for the relief of small holding settlers within the limits of the Atlantic & Pacific Railroad Co.'s grant in New Mexico. 45–617

2. No proof of settlement claims will be hereafter accepted, with a view to procuring relinquishment thereof by the Atlantic & Pacific Railroad Co. under the act of April 28, 1904, until by examination in the field such claims shall be found to be valid. 45–80

3. In making selections under the act of April 28, 1904, in lieu of lands hereafter relinquished for the benefit of settlement claims, the Atlantic & Pacific Railroad Co. will be required

to select an area in compact form approximating that relinquished. 45–80

SODIUM

See Saline Lands.

1. Regulations of May 28, 1920, act of February 25, 1920. (Circular No. 699.) 47–529

SOLDIERS AND SAILORS

See Final Proof, 48–54, 427; Homestead, X, XI; Military Service; Preference Right, II.

1. Instructions of May 26, 1922, relating to soldiers' and sailors' homestead rights. (Circular No. 302, revised.) 49–118

SOLDIERS' AND SAILORS' ADDITIONAL RIGHT

See Homestead, X.

SOLDIERS' DECLARATORY STATEMENT

See Homestead, XI.

SOUTHERN PACIFIC RAILROAD COMPANY

See Railroad Grant, 43–159.

SPECIAL AGENT

See Practice, 43–193.

STANDING ROCK RESERVATION, N. DAK.

See Homestead, 44–1, 43; 49–131; Indian Lands, 44–43; 48–80; 49–131.

ST. FRANCIS RIVER SUNK LANDS

See Arkansas Sunk Lands.

STARE DECISIS

See Estoppel; Res Judicata.

1. While the rules of *res judicata* and *stare decisis* should be considered and respected by the Secretary of the Interior, he is not precluded thereby from taking proper action in any matter remaining subject to his jurisdiction. 41–384

STATE IRRIGATION DISTRICTS

See Carey Act.

1. Regulations of March 6, 1918 (Circular No. 592), concerning State irrigation districts in their relation to the public lands. 46–307

2. The corporate existence of a State irrigation district and its right to function can not be collaterally attacked or impeached. 51–541

3. The right of a State irrigation district to function and operate in a State other than that in which it was created is a matter of comity and consent, express or implied, and can be questioned only by the State itself. 51–541

4. The provision of the reclamation law requiring payment by an entryman of all sums due the United States on account of the land or water right at the time of submission of proof as a condition precedent to the issuance of patent, is not satisfied by the assumption by an irrigation district of an obligation to pay the water-right charges; nor does an extension of time accorded by the irrigation district for the payment of accrued charges operate as an extension by the Government unless approved by the latter. 51–608

5. A State irrigation district, created by State law, although having some of the attributes of a private corporation, is a public corporation for municipal purposes and quasi municipal in character. 51–540

STATES AND TERRITORIES

See Individual Names of States; School Lands; Survey; Swamp Lands.

1. The same principles of justice and fair dealing that obtain between pri-

vate persons in matters relating to property, obtain between the Sates and the United States in their dealings with each other in this field. 42–69

2. As to new States, not entitled to representation in Congress by the apportionment under the census of 1860, the amendment (act of July 23, 1866, 14 Stat. 208), to the act of July 2, 1862 (12 Stat. 503), granting lands to the States, for the purposes of education, upon their admission to the Union, was intended by Congress as a pledge, and is ineffectual as a grant without further legislation. 45–543

3. The provision in section 3 of the act of May 14, 1880 (21 Stat. 140), limiting the time within which a settler must assert his claim to three months from the date of settlement when on surveyed land, or three months from the date of filing of the township plat when on unsurveyed land, was intended solely for the protection of the rights of settlers as among themselves, and is without application to conflicting claims of a settler and a State or railroad company under its grant. 45–582

4. The application of a State for the survey of lands under the act of August 18, 1894 (28 Stat. 394), will not prevent the inclusion of the lands within a national forest. 45–620

STATE SELECTIONS

See SCHOOL LANDS; SELECTIONS; STATES AND TERRITORIES; SURVEY.

1. Where the record contains no evidence to show that lands selected by a State are mineral in character an offer of the State to take title with the reservation of minerals to the United States can not be accepted. 51–229

2. The Government is not required to establish the mineral character of land as of the date of the filing of a State selection, if the selection was incomplete when filed; and the inclusion of the land within a petroleum reserve prior to its completion casts the burden of proof as to its nonmineral character on the State and its transferee. 49–449

3. By the use of the phrase "of equal quality" in the act of April 28, 1904, it was contemplated that there should be an even exchange, and the equality of the selected and base lands exchanged pursuant to the act must be determined in accordance with the conditions existing at the time of filing the selection. 49–522

4. A purchaser of a State selection who, after cancellation thereof with due notice to him, continues in control and possession for a long period of years without manifesting an intention of perfecting the claim into a legal title is chargeable with laches and does not acquire a right under a *bona fide* claim or color of title superior to another who is permitted to make a homestead entry and takes possession peaceably and unopposed. 49–442

5. The act of August 18, 1894, did not operate to suspend the public land laws as to lands under survey in accordance with its terms, but appropriation of lands reserved for survey may be made, except to the extent that such appropriation may come in conflict with the State's right of selection within the period of its preference right after the filing of the township plat. 51–642

6. Where the base offered by a State to support a selection is defective and the selection is suspended to afford the State opportunity to substitute a good base, but before such substitution the land is embraced in an application to make additional entry under the enlarged homestead act, which is otherwise allowable, such application constitutes an intervening adverse claim and bars amendment and completion of the State selection. 44–491

7. There is no statute authorizing contests against State selections, and it is not the policy of the Land Department to permit such contests, especially where the matters alleged in the contest affidavit are matters of record in the Land Department. 45–201

8. Under the act of August 18, 1894 (28 Stat. 372, 394), a right to select the land involved is given the State for a limited period, but such right does not exclude all other forms of appropriation, and applications tendered by others should not be rejected, but received and held suspended to await the event of the State's action. 45–574

STATION GROUNDS

See RIGHT OF WAY, IV.

STATUTES

See ACTS OF CONGRESS AND REVISED STATUTES CITED AND CONSTRUED IN VOLUME II, THIS DIGEST; AMENDMENT, 48–380; STATUTORY CONSTRUCTION.

1. Where there is a discrepancy between the printed statutes and the enrolled act the latter will control. 41–571

2. As a rule of construction, a statute amended is to be understood in the same sense exactly as if it had been so enacted at the beginning. 41–176

3. The intent of Congress, as expressed in the act of December 19, 1913, was to give to the city and county of San Francisco a preference right to the utilization of certain lands of the United States for purposes named; and by the terms of said act obligations are imposed upon the city and county inconsistent with a divided use of the lands. 46–90

4. A proviso must be interpreted in the light of the terms of the act to which it is attached. Its operation is usually confined to the clause or provision immediately preceding, but where necessary to give effect to the legislative intent it will be construed as applying to the entire act. A proviso, however, may contain legislation not directly related to the subject matter of the act itself, thus enlarging the scope of the act, or even assuming the function of an independent enactment. (Citing Hall's Safe Co. *v.* Herring-Hall-Marvin Safe Co., 31 App. D. C. 498.) 46–407

5. No departmental regulation or practice, however long continued, can override a plain statutory right, unambiguous and not the subject of construction. 47–288

6. Congress is presumed to know existing laws and, unless a clear intent to abrogate them appears in a statute, it must be construed in harmony with them. 49–625

7. In the statutes relating to entries of public lands the expressions "not more than 160 acres," "one-quarter section," and "not to exceed one-quarter section," are to be construed to mean approximately 160 acres. 49–647

8. In construing a statute it is permissible to substitute the word "and" for the word "or" when found necessary to do so in order to impart the true legislative intent as gathered from the context and the circumstances attending its enactment. 50–153

9. The purpose of the limitation in section 27 of the act of February 25, 1920, prohibiting anyone, except as therein provided, from taking or holding more than one coal lease during the life of such lease, in any one State, was, according to the legislative intent, to place a restriction on the number of leases that may be taken or held simultaneously, but not as to the number that may be held in succession. 50–153

10. In coupling the expression "can not be confirmed" with the term "erroneously allowed," as those phrases are used in section 2 of the act of June 16, 1880, which authorized repayment where an entry was "erroneously allowed and can not be confirmed," the law necessarily contemplated an entry with reference to which the defect could not be cured. 50–161

11. The language used in the proviso to section 6 of the enabling act of July 16, 1894, which excepted from the grant of public lands to the State of

Utah for school purposes, those lands embraced in "Indian, military, or other reservation of any character," is sufficient to show an intention of including within its exception areas withdrawn for their prospective oil and gas values. 50–231

12. The term "valid claims" as used in section 37 of the act of February 25, 1920, relates to unperfected claims to mineral lands and does not contemplate a completed grant of nonmineral lands to a State in aid of its common schools. 50–231

13. The act of July 17, 1914, contemplates a reservation of mineral deposits in lands embraced in unperfected nonmineral entries wherever it appears from geologic data that prospecting operations are warranted, and lands having such prospective value are "valuable for" minerals within the meaning of the act, although no actual demonstrated existence of mineral deposits has been discovered. 50–276

14. Where an entry, allowed unconditionally, may be confirmed as to a surface patent, such entry is not one "erroneously allowed" within the contemplation of section 2 of the repayment act of June 16, 1880. 50–298

15. A departmental regulation limiting the maximum area over which prospecting of incontiguous tracts of public lands for oil and gas may be conducted under one permit to a township, that is, an area 6 miles square, is a liberal interpretation of what constitutes an area in a "reasonably compact form" within the meaning of section 13 of the leasing act, and will not be modified except in special cases. 50–353

16. Nothing in the act of February 25, 1920, either directs or suggests that an applicant for an oil and gas prospecting permit shall be entitled in every instance to be awarded a permit for the maximum area authorized by the act. 50–353

17. The acts of Congress granting easements over the public lands are to be construed liberally and their spirit and intent effectuated, if possible, where the benefits to be derived therefrom are for the public interest. 50–359

18. The act of September 22, 1922, being a remedial statute, should be liberally construed so that its benefits may be extended to all those who come fairly within its scope. 50–435

19. A temporary withdrawal made with the view to classification and appraisal of land for its coal contents does not constitute a "reservation" within the meaning of the proviso to section 6 of the enabling act of July 16, 1894, relating to the grant of public lands to the State of Utah for school purposes. 50–516

20. The term "shall be in compact form," as used in section 14 of the act of February 25, 1920, in connection with the granting of a 5 per cent royalty lease thereunder, does not require that the leased lands be contiguous in all cases, but contemplates that a permittee may, where incontiguous tracts have been included in a prospecting permit, select as a reward for discovery, the legal subdivision upon which the discovery well is located, and such remaining land, as near thereto as is possible, up to the prescribed amount, whether contiguous or noncontiguous. 50–562

21. The allowance of a timber and stone entry for land subsequently withdrawn under the act of June 22, 1910, for its coal contents, is not an erroneous allowance within the purview of section 2 of the repayment act of June 16, 1880, where the entry, allowed upon the strength of a sworn statement that the land was chiefly valuable for its timber, was canceled because the land was found to be more valuable for grazing purposes. 50–627

22. Supplemental acts relating to the same subject matter may properly be regarded as a legislative interpretation of prior acts. 50–676

STATUTORY CONSTRUCTION

See STATUTES.

Generally

1. Only such laws as were expressly extended to public lands in Oklahoma are applicable to their disposition. 51–89

2. As a general rule, where a statute prescribes no specific form of affidavit in proceedings or pleadings that have to be verified by oath, the fact that the oath was administered may be shown by extrinsic evidence if no rights are prejudiced thereby. 51–285

3. Ordinarily legislation of a general nature or of *prima facie* general application does not extend to the Indians in the absence of some clear intent to include them. 51–326

4. The words "conspicuous place" as used in statutes requiring the posting of notices are equivalent in meaning to open to view; catching the eye; easy to be seen; manifest; seen at a distance; clearly visible; prominent and distinct. 51–340

5. Ordinarily, in the absence of some legislative intent to the contrary, statutes of a general nature are not to be regarded as repealing a prior special enactment relating to the same subject matter. 51–419

6. There is no existing law authorizing the issuance of patent for lands within an Indian reservation, not attached to any particular church organization, but used in part by it in conjunction with the Indians for cemetery purposes. 51–419

Act March 2, 1849

7. The acts of March 2, 1849, and Steptember 28, 1850, which granted to the States named therein the swamp and overflowed lands, rendered unfit for cultivation, did not exclude from those grants lands valuable for their mineral deposits. 51–291

Act September 27, 1850

8. The reservation of mineral lands in the Oregon donation acts of September 27, 1850, and February 14, 1853, was in effect such a reservation of lands of that character as to bring them within the class of lands "reserved" and excepted from the operation of the swamp-land grant to that State by the proviso to section 1 of the act of March 12, 1860. 51–316

Act September 28, 1850

See 51–291.

Act February 14, 1853

See 51–316.

Act March 2, 1855

9. The act of March 2, 1855, is mandatory and does not leave any discretion in an administrative officer to deny a patent to a purchaser or locator of public lands, claimed by a State as swamp, who had made entry therefor prior to the issuance of a patent to the State, notwithstanding the issuance of a patent under the swamp-land grant. 51–445

Act March 12, 1860

See 51–316.

10. Section 2490, Revised Statutes, repealed and superseded the act of March 12, 1860, which extended the swamp-land grant to the States of Minnesota and Oregon, except as to rights which accrued under the prior law, and the omission in that section of the word "reserved" used in the proviso to section 1 of the act has the effect of precluding reservations in derogation of the swamp grant. 51–316

11. Mineral lands in the State of Minnesota have never been subject to the operation of the mining laws, and inasmuch as the act of March 12, 1860, which extended the swamp-land grant to that State, contained no res-

ervation of minerals, mineral lands were not excepted from the grant. 51–316

Act July 2, 1862

See 51–437.

Act April 5, 1872

12. The act of April 5, 1872, which authorizes the location of Valentine scrip upon unoccupied and unappropriated nonmineral public lands has no application to lands in the bed of Red River, Okla. 51–89

Act March 3, 1875

13. The title of a right of way grantee is the same—that is, a base or qualified fee—whether the grant is made pursuant to the act of March 3, 1875, or to the act of March 3, 1891. 51–305

14. A railroad right of way granted pursuant to the act of March 3, 1875, conferred upon the grantee a limited fee, subject to an implied condition of reverter should the land cease to be used or retained for the purposes for which granted, and none of the land therein is subject to location and appropriation under the mining laws while the grant remains in effect. 51–604

Act March 3, 1877

15. The desert-land law requires that one applying to make entry thereunder must be at the time that the application is filed an actual resident citizen of the State or Territory in which the land sought to be entered is located, and mere intention to establish residence is not sufficient. 51–401

Act June 16, 1880

See 51–333, 566.

Act February 8, 1887

16. An Indian allotment may be allowed under section 4 of the act of February 8, 1887, for oil and gas lands with reservation of the mineral contents to the United States. 51–91

17. Section 4 of the act of February 8, 1887, provided for two classes of Indian settlers: (1) Those not residing upon a reservation, and (2) those for whose tribe no reservation had been made by treaty, act of Congress, or Executive order. 51–98

18. The mere filing of an application for allotment on public lands under section 4 of the act of February 8, 1887, does not secure to the Indian a vested right, and until his right becomes vested Congress may impose such restrictions as it may see fit. 51–98

19. Indian allotments of public lands under section 4 of the act of February 8, 1887, are not excepted from the operation of the act of July 17, 1914. 51–98

20. The provision in section 5 of the act of February 8, 1887, relating to the issuance to Indian allottees of patents after the expiration of the trust period, conveying the land in fee, discharged of the trust and free of all charge or encumbrance whatsoever, when construed in conjunction with subsequent legislation, does not prevent the issuance of restricted patents under acts of Congress which require reservations in grants under nonmineral land laws. 51–91

21. The right to an allotment under section 4 of the act of February 8, 1887, is one of the rights reserved to the Indians by the proviso to the act of June 2, 1924, which conferred citizenship upon them generally. 51–379

Act March 2, 1887

22. The act of March 2, 1887, as supplemented by the acts of March 16, 1906, and February 24, 1925, authorizing appropriation of amounts annually for the support of agricultural experiment stations, in connection with the colleges established pursuant to the act of July 2, 1862, permits Territories of

the United States to participate in its benefits, where appropriations therefor have been made, but the benefits of that law have never been extended to Hawaii; in lieu thereof, however, separate comparable appropriations have been made for similar expenditures in that Territory and other outlying Territories and possessions. 51–351

Act March 2, 1889

See 51–233.

Act August 30, 1890

See 51–524.

Act March 3, 1891

See 51–305.

23. The proviso to section 7 of the act of March 3, 1891, does not operate to confirm a canceled homestead entry where no receipt was issued, and the claimant was not entitled to receipt, for moneys tendered with his final proof and merely held subject to his order until the proof should be perfected. 51–347

24. Under the authority imposed upon him by section 11 of the act of March 3, 1891, to dispose of town lots in Alaska, a town-site trustee is empowered to designate a United States commissioner to conduct hearings in controversies involving conflicting claims to lots under that act. 51–126

Act August 18, 1894

25. The act of August 18, 1894, did not operate to suspend the public land laws as to lands under survey in accordance with its terms, but appropriation of lands reserved for survey may be made, except to the extent that such appropriation may come in conflict with the State's right of selection, within the period of its preference right after the filing of the township plat. 51–642

Act May 21, 1896

26. The act of May 21, 1896, granting rights of way through the public lands in the States of Colorado and Wyoming to pipe-line companies for the purpose of transporting oil, was repealed and superseded by section 28 of the general leasing act of February 25, 1920. 51–41

Act February 11, 1897

27. The act of February 11, 1897, which declared that lands containing petroleum and other mineral oils, and chiefly valuable therefor, may be entered under the placer mining laws, did not contemplate that the comparative value of a tract for petroleum and for coal should be considered in determining the patentability of the land on account of petroleum. 51–437

Act May 14, 1898

28. Section 10 of the act of May 14, 1898, limits the right to purchase a tract of land in the Territory of Alaska for a trade and manufacturing site to land actually occupied and used for such purpose, and an application for a prospective business site is not within the contemplation of the act. 51–194

Act March 2, 1899

29. Failure of a railroad company to file a new selection list within three months after the filing of the plat of survey, as required by the act of March 2, 1899, does not work a forfeiture of the selection, or constitute such noncompliance with the law as to remove it from the benefit of the proviso to the proclamation of May 23, 1905, in favor of lawful selections existing at its date. 51–642

Act March 16, 1906

See 51–351.

Act March 26, 1908

30. Repayment of purchase moneys and commissions subject to refund under the act of March 26, 1908, as amended by the act of December 11, 1919, is barred if not filed within two

years from the date of rejection of the application, entry, or proof, where such rejection is subsequent to December 11, 1919, or within two years thereafter where the rejection occurred prior thereto. 51–66

Act February 19, 1909

31. The limitation in section 7 of the enlarged homestead act, which relates to the quantity of lands that a settler or entryman may acquire thereunder, has no application to lands embraced in entries made prior to the act of August 30, 1890, or to settlements made prior thereto and subsequently carried to entry. 51–524

32. The fact that one had made an additional entry under section 3 of the enlarged homestead act will not preclude him from making a further additional entry under that section, regardless of the manner in which the prior entries were perfected, if the combined areas of the original and additional entries do not exceed 320 acres. 51–581

Act June 22, 1910

See 51–255.

33. The act of June 22, 1910, authorizes only agricultural entries on lands withdrawn or classified as coal lands or which are valuable for coal, and it can not be invoked in favor of one claiming other mineral deposits in those lands. 51–424

Act February 13, 1911

See 51–126.

Act June 16, 1912

34. The statutory requirement of the three-year homestead law of actual residence upon the land entered for at least seven months in each year for three years contemplates *bona fide* continuous residence, and presence on the homestead of one or two days each week during those periods will not suffice. 51–511

Act August 22, 1912

35. Within the contemplation of the act of August 22, 1912, granting to the State of Wisconsin certain islands therein, lands are unsurveyed until the survey thereof shall have been approved by the Commissioner of the General Land Office. 51–481

36. In the sense of physical detachment the term "island" is complete in itself without the additional word "unattached"; Query: Does the word "unattached" as used in the act of August 22, 1912, have reference to lands free from adverse claims? 51–481

Act July 17, 1914

See 51–98, 229.

37. Patents issued upon nonmineral entries made under the acts of July 17, 1914, and December 29, 1916, for lands covered by prospecting permits or leases, should contain recitals to the effect that the entries were allowed subject to the conditions of section 29 of the act of February 25, 1920, and to the rights of the prior permittees or lessees to use so much of the surface as is required for mining operations, without compensation for damages to crops and improvements resulting from the use of the lands for proper mining purposes. 51–166

38. The act of July 17, 1914, confers upon railroad grantees the right to select the surface of lands, which, except for that act, would be excluded from the grants on account of their mineral character, but neither a railroad company nor any person claiming under a railroad grant is entitled to a preference right to a permit or lease under the act of February 25, 1920, by reason of such selection. 51–196

39. The provision in section 1 of the act of July 17, 1914, which limits a desert entry made under that act to 160 acres, has reference only to lands withdrawn, classified, or valuable for one or more of the minerals named therein, and it does not preclude in-

clusion within such an entry of other lands, nonmineral in character, which, together with the mineral lands, exceed in the aggregate 160 acres. 51–603

40. Section 2 of the act of July 17, 1914, accords an agricultural entryman the right to a hearing where the lands within his unrestricted entry were subsequently classified as mineral and his application for reclassification is denied. 51–447

41. The issuance of a patent for lands entered as agricultural pursuant to the act of July 17, 1914, containing a reservation of mineral other than that on account of which the lands were withdrawn or classified or reported as valuable, is without authority of law and ineffective to reserve deposits of such mineral, if there be any, in the lands patented. 51–477

Act March 4, 1915

42. The benefits of the second and third paragraphs of section 5 of the act of March 4, 1915, as amended by the act of March 21, 1918, are not extended to assignees under assignments made after the latter date. 51–474

Act December 29, 1916

43. The preference right granted by section 8 of the stock-raising homestead act of December 29, 1916, is one of the "preference rights conferred by existing laws" expressly excepted from the operation of the joint resolution of February 14, 1920, as amended by the joint resolution of January 21, 1922, which granted preference right of entry to ex-service men of the war with Germany. 51–452

44. The term "final proof" as used in sections 4 and 5 of the stock-raising homestead act contemplates a final proof which is complete and entitles the entryman to a final certificate and patent. 51–452

45. The provision in section 3 of the stock-raising homestead act that one-half of the required improvements be placed upon the land within three years from the date of the entry is merely directory, not mandatory, and failure strictly to comply therewith does not preclude the Land Department from refusing to cancel the entry upon contest proceedings where the entryman has been in good faith in his endeavor to comply with the law. 51–492

Act October 2, 1917

46. The act of October 2, 1917, does not make the issuance of a patent thereunder mandatory, and the Secretary of the Interior may issue a permit to prospect for potassium carrying with it a preference right to a lease upon discovery for not to exceed one-fourth of the area covered by the permit, upon lands embraced within a subsisting oil and gas prospecting permit, provided that the permittee waives all rights to a patent. 51–180

Act March 21, 1918

See 51–474.

Act October 22, 1919

47. The limit of time for the performance of the conditions imposed by the act of October 22, 1919, as amended by the act of September 22, 1922, under a water-exploration permit, is mandatorily fixed by statute and can not be further extended by the Land Department. 51–402

Act December 11, 1919

See 51–66.

48. All claims for repayment which come within the purview of the act of December 11, 1919, are subject to the two-year limitation therein contained, notwithstanding that they may have been presentable under the act of June 16, 1880, which did not contain that limitation. 51–333

49. The limitation in the act of December 11, 1919, fixing the time

within which applications for repayment shall be filed, begins to run, in cases involving a railroad indemnity selection list, from the date of the rejection of each item thereof in so far as that particular tract is concerned, without regard to the time of the final disposal of the list as a whole. 51–495

Act February 14, 1920

See 51–452.

Act February 25, 1920

See 51–41, 196.

50. Prior to the enactment of the act of February 25, 1920, Congress made no provision for the disposition of the minerals reserved in agricultural patents issued pursuant to the act of July 17, 1914, and on and after that date the mineral deposits named in the leasing act, reserved by such patents, became subject to disposition only in accordance with the terms of that act. 51–229

51. Neither the leasing act of February 25, 1920, nor the extension act of January 11, 1922, authorizes the extension of the life of an oil and gas prospecting permit beyond five years, and contribution by a permittee toward the cost of a test well upon other land can not be accepted as a basis for the suspension, after the expiration of that period, of a permit under which drilling had not been commenced. 51–274

52. A permittee under the act of February 25, 1920, who applies for an oil and gas lease is entitled to the benefit of the 5 per cent royalty provision of the act from the date of the filing of the application for lease unless and until his application shall be rejected. 51–282

53. By the terms of the leasing act of February 25, 1920, the rights of a "person" or an "association" are coextensive with those of a corporation. 51–299

Section 7

54. The provision in section 7 of the act of February 25, 1920, requiring the payment of a rental on the basis of the acreage wherein coal deposits are leased, is applicable to leased coal lands the surface of which has been patented under the agricultural land laws with the reservations prescribed by the act of June 22, 1910. 51–255

Section 13

See 51–177.

55. A permittee of lands in Alaska who has drilled beyond the depth (2,000 feet) required by section 13 of the act of February 25, 1920, and who desires to perform further drilling is as much entitled to an extension of time under that section, for not exceeding two years under the same circumstances, as would a permittee of lands in the United States. 51–177

56. The word "provided," as used in section 13 of the act of February 25, 1920, is to be construed as a conjunction, and when thus construed all preceding provisions of that section not inconsistent with the later provisions thereof are applicable in so far as they relate to permits issued both for lands in the United States and in Alaska. 51–177

57. Where a test well has been or is about to be drilled upon the geologic structure which includes lands for which an application has been filed for a permit to prospect for oil and gas under section 13 of the leasing act, the Secretary of the Interior has, in the discretion vested in him by that act, the power to withhold the lands from disposal pending the outcome of tests upon the structure. 51–235

Section 14

See 51–166.

Section 15

58. Section 15 of the act of February 25, 1920, does not require payment

of royalty on the oil or gas used for production purposes on permit lands, or that is unavoidably lost. 51–283

Section 20

59. Section 20 of the leasing act is, in its nature, a relief measure, designed to recognize the equities of entrymen who made agricultural entries in good faith and prior to the classification of the lands as valuable for oil and gas, and should be liberally construed. 51–413

60. Congress intended that the only effect that a classification of land as within the known geologic structure of a producing oil and gas field should have upon the rights of an entryman otherwise entitled to a preference-right permit under section 20 of the leasing act, was that, instead of being awarded a permit and subsequently, as a reward for discovery, the reduced royalty authorized by section 14 of the act, he, like all others, should receive only a lease at a higher royalty rate. 51–413

61. The right of an agricultural entryman to be preferred in the award of an oil and gas prospecting permit granted by section 20 of the leasing act of February 25, 1920, is not applicable to homestead entries initiated after the passage of that act. 51–622

Section 27

62. The restrictions of section 27 of the act of February 25, 1920, relate to the substance and not the form of assignments and contracts, and an operating agreement entered into between a permittee and an operator must be construed with reference to its legal effect rather than the purpose of the parties. 51–241

63. An application for a permit or lease by two or more persons jointly under the act of February 25, 1920, is *prima facie* an application by an "association" within the meaning of section 27 of that act. 51–299

64. Section 27 of the act of February 25, 1920, does not preclude an individual or an association from holding interests in more than one permit or lease on a structure, or three in a State, as a member of an association or of several associations, provided that the interests, both direct and indirect, do not exceed the acreage limitation. 51–299

Section 28

65. Section 28 of the act of February 25, 1920, specifies that pipe lines for conveying oil and gas through the public lands, pursuant to rights of way authorized by that act, shall be operated and maintained as common carriers. 51–41

Section 29

66. The term "lease" used in section 29 of the leasing act of February 25, 1920, includes prospecting permits issued under that act. 51–166

Act June 10, 1920

67. By the enactment of the Federal water power act, Congress contemplated that all of the waters on the public or reserved lands of the United States which are or may become available for the generation of power should be reserved and set apart under such conditions as to result in the greatest public good, without regard as to their location within particular territorial limits. 51–53

Act March 3, 1921

68. The provision in the Indian appropriation act of September 21, 1922, which relates to the issuance of patents to religious organizations for lands within Indian reservations generally, did not repeal the proviso to section 3 of the special act of March 3, 1921, as to the form of patent to be issued or the quantity of land granted to such organizations within the Fort Belknap Reservation, Mont. 51–419

Act January 11, 1922

See 51–274.

69. The act of January 11, 1922, enlarged, but did not supersede, the provision in section 13 of the act of February 25, 1920, relating to the granting of extensions of time for the performance of drilling operations upon lands embraced within oil and gas prospecting permits. 51–177

Act January 27, 1922

70. The act of January 27, 1922, was remedial legislation for the benefit of one, other than the original entryman, who had been permitted to enter land formerly in a confirmed entry, erroneously canceled, but it did not contemplate that the change of entry provision should extend to a claimant who is also the present holder under another form of entry. 51–245

Act September 21, 1922

See 51–419.

Act September 22, 1922

See 51–402.

Act June 2, 1924

See 51–379.

Act February 21, 1925

71. The right of a veteran to refund under the act of February 21, 1925, of charges paid by him on a reclamation homestead entry which he relinquishes prior to receipt of final certificate and within one year after the passage of the act is not defeated by action of the Government in canceling the entry, for sufficient reasons, independently of the relinquishment. 51–329

72. The word "after" in line 5, section 2, of the act of February 21, 1925, is meaningless, was inadvertently retained in the process of legislation, and should be ignored. 51–329

73. The act of February 21, 1925, is applicable only to public lands and does not authorize refund of charges paid on a water-right application for the irrigation of land in private ownership. 51–345

Act February 24, 1925

See 51–351.

Act March 4, 1925

See 51–523.

Act June 15, 1926

74. The transferee of an entryman of Fort Peck Indian lands is entitled under the act of June 15, 1926, to the same benefits as to extension of time within which to complete payments as that act and the prior act of March 4, 1925, accord to the entryman himself. 51–523

Act July 25, 1926

75. The provision in the first proviso to section 2 of the act of June 25, 1926, for the payment of costs of operation in making the potash explorations authorized by the act, applies only to the owners or lessees, or both, of the land and minerals or the mineral rights, and has nothing to do with a mere surface entryman or owner who has no interest in the mineral deposits. 51–626

Revised Statutes

Section 183

76. The limited authority conferred upon inspectors of the Land Department by section 183, Revised Statutes, as amended by the act of February 13, 1911, to administer oaths, does not include the authority to administer oaths in connection with hearings to determine the rights of conflicting claimants under the Alaska town-site laws. 51–126

Section 2289

77. Both section 2289, Revised Statutes, and section 6 of the act of March 2, 1889, require that additional entries

made pursuant thereto shall be by legal subdivisions and, inasmuch as the smallest subdivision recognized by the public land laws having reference to homestead entries is 40 acres, it follows that one who is not qualified to make an additional entry of a 40-acre subdivision under those laws, is not qualified to make an original entry under the stock-raising homestead act. 51–233

Sections 2306–2307

78. The soldiers' additional right granted by section 2306, Revised Statutes, must be accorded the quality of inheritability and, if not exercised or transferred by the donee, passes to his estate as other property, subject only to the exercise of the rights given by section 2307, Revised Statutes, to the widow and minor orphan children. 51–287

Section 2337

79. The appropriation of land for the purpose of conveying water to and for a road used in transporting ore from actively operated mining claims can not be considered such a use for mining and milling purposes as is contemplated in section 2337, Revised Statutes. 51–123

80. A mill site is not a mining claim or location within the meaning of the United States mining laws. 51–123

81. A rock crusher or pulverizer, not shown to be connected with or forming an essential part of the instrumentalities used in any process of reduction is not a "reduction works" within the meaning of the last clause of section 2337, Revised Statutes. 51–459

Section 2396

82. A deficiency in acreage caused by alleged gross inaccuracies in the surveys is not a ground for adjustment of a State grant, inasmuch as section 2396, Revised Statutes, declares that in the disposal of the public lands the official surveys are to govern, and that each section or subdivision thereof shall be held and considered as containing the exact quantity shown on the plat. 51–409

Section 2449

83. Section 2449, Revised Statutes, declaring in terms all selection lists "perfectly null and void" if the lands certified are not of the character granted by the act upon which the selection is based, is inoperative to restore jurisdiction in the Land Department lost by the approval of a certification of a tract of land selected by the State of Nevada under the grant of June 16, 1880, where the certifying officers acted within the scope of their authority and upon a presentation of evidence showing the land to be of the character contemplated by the grant. 51–566

Section 2490

See 51–316.

84. Query: Does failure to select within the time specified in section 2490, Revised Statutes, forfeit the grant? 51–317

STIPULATION

See EVIDENCE, 41–655.

STOCK DRIVEWAY WITHDRAWAL

See HOMESTEAD, XVIII.

STOCK-RAISING HOMESTEADS

See HOMESTEAD, XVII.

STOCK-WATERING RESERVOIR

1. Instructions of May 3, 1923, permits for fencing stock-watering reservoirs. (Circular No. 893.) 49–577

SULPHUR LANDS

1. Regulations of December 22, 1926, sulphur prospecting permits and leases in the State of Louisiana. (Circular No. 1104.) 51–647

SUNDAY

See PRACTICE, 47–590.

SUPERVISORY AUTHORITY OF SECRETARY

See Coal Lands, 48–29; 50–197, 342; Land Department; Oil, Gas, etc., Lands, 48–355, 623; 49–445, 613, 625; Secretary of the Interior.

1. The supervisory authority of the department may properly be invoked by *certiorari* where a substantial failure of justice, due to action taken by a subordinate tribunal, would otherwise occur. 46–183

2. Failure to appeal within the time permitted by the Rules of Practice will not preclude consideration by the department, in a meritorious case, in the exercise of its supervisory authority. 46–183

3. The Rules of Practice of the Land Department were adopted to facilitate the administration of the public land laws, and where such rules conflict with the department's due exercise of its supervisory authority they will not be followed. 46–183

4. Regulations adopted by the Secretary of the Interior covering matters resting in his discretion under the general supervisory authority vested in him may be waived by him in the exercise of such discretion. 46–279

5. Motion for exercise of supervisory authority does not act as supersedeas. 47–419

6. In the administration of the public lands, the Secretary of the Interior may, unless limited by special statutory provision, take cognizance of equities acquired in good faith by claimants, without an act of Congress expressly conferring that authority. 48–582

7. Under a rule of administration adopted by the Land Department, based upon an agreement with the State of Minnesota, the character of ceded Chippewa Indian lands selected by the State under the swamp-land grant of March 12, 1860, is to be determined by an examination in the field, and where the selected lands, as the result of such examination, have been classified as swamp, the right of an adverse claimant to contest the classification does not exist. 48–359

8. Supervisory authority is not designed to enforce technicalities, and refusal of the register and receiver to render a default judgment in a contest because the answer of contestee was filed and served after the expiration of 30 days from notice of contest, and the ordering of a hearing thereupon, are not sufficient grounds for invoking its exercise. 48–593

9. The Land Department, in the exercise of its supervisory authority, may permit the inclusion of less than a legal subdivision of public land in a homestead entry, if the controlling circumstances and the protection of equities justify it. 49–203

10. While there is no Federal statute that prohibits project managers of reclamation projects from acquiring interests in lands, either public or private, within the projects under their supervision, yet it is within the supervisory authority of the Secretary of the Interior to forbid it by appropriate regulation. 50–175

11. The Secretary of the Interior has no general statutory authority to suspend, even temporarily, public notices issued by him pursuant to section 4 of the act of June 17, 1902, of lands irrigable under reclamation projects, nor does he possess supervisory power to do so in the absence of a specific statute authorizing it. 50–223

12. Except where specifically authorized by law, the Secretary of the Interior is not empowered to grant extensions of time, either directly or indirectly, for the payment of charges accruing from individual water users upon reclamation projects. 50–223

13. Pursuant to the supervisory power over the public lands vested in the Secretary of the Interior by section 441, Revised Statutes, that officer is clothed with the authority to cancel a survey executed under the direction of the Commissioner of the General

Land Office, which, in the opinion of the former, was unauthorized. 50–438

14. The department will recognize a preferred right to initiate and perfect title in one who in good faith under color of title has taken possession of, occupied, and improved public land under misunderstanding or misinformation as to his legal rights and it is vested with the discretion to hold the title in the United States until he may be enabled to acquire title under existing law or by special act of Congress. 50–486

15. A change in departmental regulations whereunder it is imperative to deny an application for the reduction of the required area of cultivation which could have been granted under the previously existing regulations is a function within the authority of the Secretary of the Interior conferred by the three year homestead act and does not deprive the applicant of any statutory right. 50–595

SUPREME COURT SCRIP

See SCRIP, 44–54.

SURFACE RIGHTS

See COAL LANDS, VI; HOMESTEAD, 48–281; 49–312, 324, 659, 660, 671; OIL, GAS, ETC., LANDS, II; also 41–583; 46–46; 48–110, 155, 164, 214, 243, 277, 356, 623; 49–580, 610; POTASH LANDS; RAILROAD GRANT, 43–513; 48–573; 49–587; SCHOOL LANDS, 49–436.

SURVEY AND RESURVEY

See ACCOUNTS; ACCRETION, 46–461; 50–357; ALASKA; BOUNDARIES; MINING CLAIM, 45–174, 330, 331; NAVIGABLE WATERS, 49–452; RESERVATION, 42–20, 124, 148, 573; RIGHT OF WAY; SCHOOL LANDS, 44–215, 414; 48–114, 132, 139, 418; 49–341.

I. Survey

1. Instructions of October 8, 1912, governing plats of survey of mining claims in Alaska. 41–294

2. Instructions of August 12, 1913, governing survey of lands withdrawn while unsurveyed. 42–318

3. Instructions of January 29, 1917, relative to the filing of township plats. 45–648

4. Alaska homesteads. (Circular No. 623.) 46–450

5. Instructions of August 9, 1917, regarding deposits by individuals for survey of public lands. 46–178

6. Owens Lake, Calif., ownership of lands uncovered by water's recession. Instructions of March 23, 1917. 46–68

7. Regulations of August 12, 1921, relative to adjustment of claims in certain townships in Florida; act of October 31, 1919. 48–195

8. Instructions of April 7, 1925, office of surveyor general abolished; reorganization of surveying service. (Circular No. 996.) 51–112

9. Instructions of November 13, 1925, procedure in public survey offices. (Circular No. 1042.) 51–279

10. Instructions of July 31, 1926, survey of homestead claims in Alaska; Circular No. 491, amended. (Circular No. 1087.) 51–514

11. Instructions of November 18, 1926, survey of unsurveyed lands applied for under the leasing act. (Circular No. 1102.) 51–630

12. A selection of unsurveyed lands under the act of March 2, 1899, prior to the regulations of November 3, 1909, designating the selected tracts as what will be, when surveyed, technical subdivisions of specified sections, accepted by the officers of the Land Department pursuant to then existing regulations and practice, confers upon the selector a preference right to the lands upon their identification by actual survey. 43–381

13. An island in an odd-numbered section within the limits of the grant made by section 3 of the act of July 2, 1864, to the Northern Pacific Railroad Co., will not be surveyed on application of the company where it appears that said island is occupied as a burial ground by the Indians. 43–390

14. An application by a State for the survey of a township under the act of August 18, 1894, has no effect as against other applications to appropriate lands within the township until it is received by the Commissioner of the General Land Office, and has no effect as against the United States until proper selection of the lands by the State. 42–118

15. Lands withdrawn by section 1 of the act of February 28, 1911, for the benefit of the city of Seattle, and not within the Cedar River Basin, are not restored to their former status by section 2 of that act until the survey has been completed and approved by the Secretary of the Interior. 43–525

16. The Commissioner of the General Land Office has authority to reject the application of a State for the survey of additional townships under the act of August 18, 1894, where sufficient withdrawals have already been made under that act to satisfy the claims of the State under its grants. 43–168

17. Affirmative action by the Commissioner of the General Land Office, after publication of notice of an application for survey under the act of August 18, 1894, is a prerequisite to a withdrawal of the lands. 43–168

18. The approval and filing of a plat of survey relate back to the actual making of such survey, and the survey in the field identifies each tract shown thereon and constitutes notice to all intending settlers of the *locus* of tracts previously claimed in terms of Government subdivisions, except as may be otherwise provided by statute. 43–328

19. Local officers are without power to permit entry of public lands where no approved plat of survey thereof is on file in their office; and where after filing of a plat of survey it is withdrawn for the correction of error therein, the lands are not subject to disposal under the public land laws until the survey is corrected and the approved plat refiled. 43–103

20. Unsurveyed public lands are not subject to homestead entry, and an application to make entry can not be filed prior to their official survey and opening to entry. 49–549

21. The official return of the surveyor general as to the area of a legal subdivision is, so long as the survey stands, conclusive of the area acquired through entry of that subdivision; but the Land Department may, upon allegation of defect in the official survey, direct a resurvey to determine the true area of the legal subdivision in question, with a view to ascertaining whether the entryman is disqualified, by reason of the area embraced in his entry, from making an additional entry. 43–113

22. A meander line is a line run in the survey of particular portions of the public domain bordering on a stream or other body of water, not as a boundary of the tract surveyed, but for the purpose of defining the sinuosities of the bank or shore of the water and as a means of ascertaining the quantity of land within the surveyed area subject to sale. 45–330

23. While, ordinarily, public lands are surveyed and disposed of by rectangular subdivisions without segregation of railroad rights of way or deduction for the area covered thereby, such practice is not applicable to farm units in the Huntley irrigation project, where the Indians were paid for such of their lands as were covered by the right of way of the Northern Pacific Railway Co. 45–646

24. Where farm units have been regularly fixed and surveyed and entries under the homestead and reclamation laws made therefor, surveys or farm units will not be so amended as to enlarge or diminish the acreage without the consent of the entrymen. 45–646

25. The line established by an approved Government survey of a Mexican private land grant, made in pursuance of section 3 of the act of March 3, 1869 (15 Stat. 342), and

long acquiesced in, will be deemed the boundary of the grant. 46–301

26. One of the boundaries of a Mexican private land grant was the line of a mountain range. The grant was later surveyed by the United States, and it was subsequently alleged that as to the summit line of said range a variance existed between the survey and the summit as it exists upon the ground. *Held*, That in such case the line established by the Government survey controls, and will not be disturbed. 46–301

27. As the United States is without jurisdiction over the vacant and unappropriated private lands within the State of Texas, it has no duty to perform in the matter of surveys, determinations, or adjustments necessary to define the rights of any parties in interest. They must be performed by the State, or such tribunals as may have authority therefrom. 47–372

28. Where, in a survey of public land, a body of water or lake is found to exist and is meandered, and the abutting lands disposed of, the Land Department has no jurisdiction over the submerged land or lake bed, or authority to grant potash lease therefor. 47–72

29. In the interpretation of a patent for a Mexican private land grant, in which a mountain range is designated as one of the boundaries, the rule will be applied that where a call is from one point in a continuous object, natural or artificial, to another point in the same object, the line between and connecting the two points follows the sinuosities of such object, rather than a straight line connecting those points. 48–87

30. The call for courses and distances of a protracted Government survey made subsequent to a Mexican private land grant, which is at variance with the sinuosities of a mountain range described in the patent as one of the boundaries of the grant, must yield, in case of doubt, to the superior call for the natural monuments referred to as constituting the boundary of the claim. 48–88

31. When the meander line and the water line of a lake do not coincide, the water line is the boundary of a Government grant of lands abutting thereupon; and in a State in which the statutes contain no specific provision as to riparian rights with reference to a nonnavigable lake, but in which the common law prevails, the title to the bed of such lake is vested in the owners of the adjoining shore lands. 48–128

32. The relation between a mineral survey and a conflicting public-land survey is sufficiently shown by the tie of the mining claim to one of the corners of the public-land survey and by the courses and distances given in the respective surveys. 48–616

33. The Land Department, after it has disposed of the adjacent surveyed lands, has no jurisdiction to survey, as omitted areas, small tracts of lands outside the meander line of the original surveys about the margins of lakes and streams, which were narrow strips or shifting sand bars, towheads, or other unsubstantial areas, considered of little value at the time of survey. 50–381

34. In applying the well-established principle that where substantial areas of public lands are omitted by reason of fraud or gross error in the original survey, the Government is not estopped from surveying the omitted areas for disposal under the public-land laws, it is impracticable to fix any general rule, even an arbitrary one, based upon acreage or measure of depth that may be regarded as the minimum of which cognizance of error will be taken. 49–452

35. Where a survey was fraudulent or grossly inaccurate in that it purported to bound tracts of public lands upon a body of water, when in fact no such body of water existed at or near the meander line, the false meander line and not an imaginary line

to fill out the fraction of the normal subdivision marks the limits of the grant of a lot abutting thereon, and, upon discovery of the mistake, the Government may survey and dispose of the omitted area as a part of the public domain. 50–679

36. Lands omitted from the original surveys through error in running the meander lines of lakes or other bodies of water, to which claims of ownership are predicated upon titles derived under patents issued in conformity with the original surveys, are not such vacant, unappropriated lands as to be subject to general disposition under the public land laws prior to the determination of the claims arising under the old titles. 51–197

37. Where a tract of land has been officially surveyed and the Government had patented all the lands returned by the surveyor, the Land Department is without authority to order a corrective survey notwithstanding the tract actually contains an area greatly in excess of the amount returned. 51–322

38. A deficiency in acreage caused by alleged gross inaccuracies in the surveys is not a ground for adjustment of a State grant, inasmuch as section 2396, Revised Statutes, declares that in the disposal of the public lands the official surveys are to govern, and that each section or subdivision thereof shall be held and considered as containing the exact quantity shown on the plat. 51–409

39. An official plat, upon which are shown the boundaries of a confirmed Mexican grant, based upon a survey made and approved in accordance with the provisions of the act of June 4, 1860, amounts to a final determination that the *situs* of the grant is that shown on the plat. 49–548

40. Section 2396, Revised Statutes, contemplated that in the disposal of public lands the official surveys are to govern and that each section or sectional subdivision, the contents whereof have been returned by the surveyor general, shall be held as containing the exact quantity expressed in the return. 49–583

41. It is not appropriate to consider after a lapse of many years whether the survey of the boundaries of a Mexican grant was accompanied with the nicest discrimination or the highest wisdom, and such survey will not be disturbed on account of inaccuracies where it accomplished the purpose of establishing the boundaries with approximate and reasonable accuracy. 49–663

42. The fact that an area of land in the State of California returned by the surveyor as swamp included a small area of high land is not sufficient to necessitate a subdivisional survey in order to confer title upon the State, if the area as a whole, characterized as swamp is in fact land of that class. 49–663

43. In establishing the side boundaries of claims of riparian proprietors to the area between the original meander line on the north and the medial line of Red River in Oklahoma in accordance with the decisions of the Supreme Court in the case of Oklahoma *v.* Texas, lines should be run from points representing the limits of frontage of the original claims on the meander line to points on the medial line at distances thereon proportionate to the lengths of frontage of the respective abutting owners. 50–216

44. Within the contemplation of the act of August 22, 1912, granting to the State of Wisconsin certain islands therein, lands are unsurveyed until the survey thereof shall have been approved by the Commissioner of the General Land Office. 51–481

45. A private survey made for the purpose of marking on the ground a theoretical line, platted but not run by the Government, where executed within the allowable departure from cardinal course, and relied upon by an owner under title passed by the United States in the placing of improvements upon the patented land, will not be dis-

turbed, but it will be adopted by the Government as a boundary for closure of the survey of the adjoining public land. 50–402

46. Where an oil and gas prospecting permit is issued for unsurveyed lands, the survey required by section 14 of the leasing act, when discovery is made, need not conform strictly to the rectangular surveys adopted under the general laws governing public-land surveys, but may be so made as to preserve the exterior boundaries of the claim. 50–618

47. The provision in section 14 of the act of February 25, 1920, that unsurveyed lands covered by a prospecting permit be surveyed at the expense of the permittee before a lease is awarded as a result of a discovery of oil or gas, authorizes the Secretary of the Interior to prescribe rules and regulations to govern the making of such surveys without regard to the general laws under which public-land surveys are made. 50–618

48. A survey which sets apart as a unit a tract of land for a forest homestead entry, does not supersede the township survey if the land thereafter becomes subject to appropriation, but it may be subsequently entered by legal subdivisions in accordance with the township plat. 50–686

II. Resurvey

49. Regulations of January 13, 1917 (Circular No. 520), governing applications for resurveys under the act of March 3, 1909, as amended. 45–603

50. Regulations governing applications for resurveys, act September 21, 1918. 46–504

51. Instructions of March 1, 1920; issuance of patents for lands withdrawn pending resurvey. 47–342

52. The fact that a senior entryman may have innocently located the lines of his claim at variance with the Government survey as determined on resurvey does not entitle him to a metes and bounds survey to the detriment of a junior entryman claiming according to the true lines. 46–288

53. The act of March 3, 1909 (35 Stat. 845), as amended by the act of June 25, 1910 (36 Stat. 884), does not authorize surveys to define the boundaries of claims other than according to the lines of the original surveys where in so doing conflicts between claimants would be involved. 46–288

54. When a patentee acquiesces in an adjustment made by the Land Department incidental to the resurvey of a township, a settler who has not acquired any vested interest in the lands affected by the resurvey is not in a position to raise an objection that the tract shown by said resurvey as having been patented is not, in fact, the identical tract that was patented. 48–48

55. Where lands are withdrawn from entry and disposition pending the resurvey of a township, the proviso to the act of March 3, 1909, does not except from the operation of the statute a settlement made subsequently to withdrawal, but the right to initiate the claim, which must conform to the plat of resurvey, is postponed until vacation of the withdrawal order. 48–48

56. Where the evidences of a Government survey are sufficient for identification of the boundaries, differences in the measurements and areas of public lands from those shown in the returns of the official survey alleged by an owner asserting a claim for repayment on the ground of shortage does not afford a basis for resurvey. 49–583

SURVEYOR GENERAL

See ACCOUNTS, 44–171.

1. The official return of a surveyor general is entitled to have accorded to it the force of a deposition. 51–433

2. Instructions of April 7, 1925; office of surveyor general abolished;

reorganization of surveying service. (Circular No. 996.) 51–112

SWAMP LANDS

See MINERAL LANDS, 51–316; MINNESOTA DRAINAGE LANDS.

1. Instructions of May 25, 1918, relative to swamp-land grants and mineral lands. 46–389

2. The acts of March 2, 1849, and September 28, 1850, which granted to the States named therein the swamp and overflowed lands, rendered unfit for cultivation, did not exclude from those grants, lands valuable for their mineral deposits. 51–291

3. Where by mistake patent issued to a State for a tract of land not claimed by it, instead of a tract claimed by it under its swamp-land grant, it is not entitled to receive patent for the tract claimed as swamp until reconveyance to the United States of title to the tract erroneously patented to it. 42–69

4. The right conferred upon a settler by the circular of December 13, 1886, to contest the claim of the State under its swamp-land grant to the land settled upon, is personal to the settler and can not be transferred. 44–388

5. The grant of swamp and overflowed lands made to the State of Oregon by the act of March 12, 1860, extends to and embraces swamp and overflowed lands, lying outside the diminished Klamath Indian Reservation, which at the date of the grant were in the possession and occupancy of said Indians but which by the treaty of October 14, 1864, were ceded to the United States. 44–123

6. The reference in paragraph 3 of the instructions in the case of State of Louisiana (32 L. D. 270, 277), to selection lists which had theretofore been presented, "which purported to include, and should have included, the whole of the swamp lands" in a given township, contemplates cases wherein the provisions of paragraph 6 of the circular of September 19, 1891 (13 L. D. 301), requiring a certificate that selection lists cover the full and final claim of the State to lands under the swamp-land acts in the townships specified and that the State waives all claim under said acts to lands in said townships not selected, have been complied with, and is not applicable where the State has not been required to file the certificate mentioned. 45–103

7. The claim of a State to land under its swamp-land grant is incomplete and inchoate, and does not become perfect, as of the date of the act, until patent is issued conveying the fee simple title; and until so patented the Land Department has jurisdiction to investigate and determine both the swamp and overflowed condition of the land as well as its mineral character. 47–92

8. Lands covered by an apparently permanent body of water at the date of the swamp-land grant to the State are not of the character contemplated thereby, even though subsequently, by a recession of the waters, land of a swampy character should come into existence. 47–93

9. The grant of swamp and overflowed lands to the State of California by the act of September 28, 1850, has no application to lands ceded by the State to the Government for the purpose of aiding in the operations of irrigation and reclamation conducted by the Reclamation Service. 47–207

10. The fact that an area of land in the State of California returned by the surveyor as swamp included a small area of high land is not sufficient to necessitate a subdivisional survey thereof in order to confer title upon the State, if the area as a whole, characterized as swamp, is in fact land of that class. 49–663

11. Query: Does failure to select within the time specified in section 2490, Revised Statutes, forfeit the grant? 51–316

12. Only upon approval by the Secretary of the Interior under the act

of March 2, 1849, granting swamp and overflowed lands to Louisiana, or the issuance of patent under the general swamp act of September 28, 1850, does the fee simple title vest in the State; prior thereto its title is inchoate and imperfect both in law and in equity. 47–366

13. Lands embraced within a petroleum withdrawal are thereby impressed with a *prima facie* mineral character; and the burden is upon the State to overcome this or suffer the rejection of its claim thereto under the swamp-land grant, which does not embrace mineral lands. 47–366

14. Neither the act of March 2, 1849, granting swamp and overflowed lands to Louisiana, nor the general swamp act of September 28, 1850, creates of its own force a present grant of complete title in the State, and prior to approval by the Secretary of the Interior under the former or the issuance of a patent under the latter, the authority of the Land Department to inquire into and determine all rights and equities claimed as against the Government does not cease. 48–201

15. The State of Louisiana does not acquire a complete and perfected interest equivalent to full equitable title under either of the swamp acts of March 2, 1849, and September 28, 1850, to any tract until it has been finally identified as of the class and condition contemplated by the granting act. 48–201

16. Mineral lands, not being expressly included within the terms of either of the swamp acts of March 2, 1849, and September 28, 1850, do not inure to the State of Louisiana, and prior to the Secretary's approval under the former or the issuance of a patent under the latter act, the character of claimed swamp land is open for investigation and adjudication. 48–201

17. A subsisting petroleum withdrawal impresses the lands therein with a *prima facie* mineral character, and where the State of Louisiana seeks to acquire title to claimed swamp lands within such withdrawn area, it is incumbent upon the State to prove that the lands are in fact nonmineral. 48–201

18. Mineral lands in the State of Minnesota have never been subject to the operation of the mining laws, and inasmuch as the act of March 12, 1860, which extended the swamp-land grant to that State, contained no reservation of minerals, mineral lands were not excepted from the grant. 51–316

19. The reservation of mineral lands in the Oregon donation acts of September 27, 1850, and February 14, 1853, was in effect such a reservation of lands of that character as to bring them within the class of lands "reserved" and excepted from the operation of the swamp-land grant to that State by the proviso to section 1 of the act of March 12, 1860. 51–316

20. Section 2490, Revised Statutes, repealed and superseded the act of March 12, 1860, which extended the swamp-land grant to the States of Minnesota and Oregon, except as to rights which accrued under the prior law, and the omission in that section of the word "reserved," used in the proviso to section 1 of the act, has the effect of precluding reservations in derogation of the swamp grant. 51–316

21. A selection by the State of Minnesota of ceded Chippewa Indian lands, which a field examination shows are swamp in character, segregates the lands and precludes the allowance of a homestead application based upon prior settlement, unless the settlement was initiated before the filing of the selection list in the local office. 48–359

22. An agreement between the State of Mississippi and the United States whereby the character of specific tracts of land as of the date of the swamp act of September 28, 1850, should be determined by the showing of the field notes and plats of the Government survey, does not preclude the Land Department in the exercise of its judicial function in determining whether or not lands were of the char-

acter that passed under that grant, from admitting evidence to show their true condition at the time that the grant became operative, where the official survey was made prior to the passage of the act and there was no reason for the surveyor to make particular note of the swamp or nonswamp character of the lands. 48–421

23. Where it becomes necessary to determine by a hearing whether or not lands were of the character that were granted by the swamp act of September 28, 1850, expert testimony of Government witnesses, based upon evidence now available, from which the inference may be reached that the soil environment and the former forest conditions were such as to negative the possibility that the lands could ever have been of a swamp character, is not sufficient to counteract the direct testimony of witnesses familiar with the land at the date of the passage of the act. 48–421

SWEETWATER COUNTY, WYO., LANDS

See Potash Lands.

TAXATION

See Indian Lands, 50–691; Vested Rights, 50–486.

1. The provisions of the act of August 11, 1916, do not authorize the tax-levying authorities of a State or county to impose penalties for nonpayment of taxes assessed against unentered public lands subjected to taxation by that act. 49–158

2. Incomes derived by unallotted tribal Indians, residing upon a reservation set apart for their benefit, from sources almost entirely, if not exclusively, within such reservations, are not subject to a Federal income tax under existing laws. 51–326

TAX SALE

See Minnesota Drainage Lands.

TELEPHONE LINE

See Right of Way, III; Timber Cutting, 50–608.

TERRITORIAL LEGISLATURE

See Officers, 50–365.

TEXAS, STATE OF

See Private Land Claims.

TIDE LANDS

See Indian Lands, 50–315.

TIMBER AND STONE ACT

See Oregon and California Railroad Lands, 46–447; Repayment, 42–28, 181; 44–516, 585; 45–182; 50–627; Words and Phrases Construed, 47–250.

I. Generally

1. Revised regulations of January 2, 1914. 43–37

2. Circular of December 20, 1915, amending section 20 of the timber and stone regulations of November 30, 1908. 44–504

3. Paragraph 19 of regulations of November 30, 1908, as revised January 2, 1914, amended February 19, 1916. 44–551

4. Regulations of September 20, 1922, under the timber and stone law; revision. (Circular No. 851.) 49–288

5. Regulations of February 25, 1926, timber and stone. (Circular No. 851, revised.) 51–365

6. Section 1 of the act of March 3, 1911, authorizing the reinstatement of homestead entries canceled or relinquished because of the erroneous allowance of such entries after the withdrawal of lands for national forest purposes, makes no provision for the reinstatement of canceled timber and stone entries. 41–261

7. Lands ceded to the United States by the Comanche, Kiowa, and Apache Tribes of Indians, and, by the act of June 6, 1900, made subject to disposal under the general provisions of the homestead, town site, and mining laws,

are not subject to disposal under the timber and stone act. 41–132

8. Paragraph 30 of the regulations of November 30, 1908, provides that after the filing of a timber and stone application no other application under any public land law shall be received for the land until the timber and stone application has been finally disposed of adversely to the applicant; and no rights are acquired under a homestead application received and filed contrary to such regulation. 41–510

9. Where a portion of a timberland entry is eliminated for conflict with a prior school indemnity selection, and the remaining tracts are thereby rendered noncontiguous, patent may issue therefor, notwithstanding such noncontiguity, upon confirmation of the entry by the Board of Equitable Adjudication. 42–532

10. Collusive arrangements through which persons are induced to make timberland entries with a view to sale of the body of lands so entered to another, the sole interest of the entrymen being an expectancy in the profits of the transaction to an amount agreed upon from the beginning, are in violation of the statute, and entries so made, being purely speculative, must be canceled. 42–440

11. The filing of a timber and stone declaratory statement, not preceded by personal examination of the land by the applicant, does not constitute a "duly initiated" claim within the meaning of the excepting clause in the withdrawal of May 29, 1903, for the Heppner National Forest, and is not sufficient to except the land embraced therein from the effect of such withdrawal. 42–437

12. That part of paragraph 29 of the regulations of November 30, 1908, as revised August 22, 1911, under the timber and stone act, which declares that all moneys paid by an applicant under the timber and stone act will be forfeited to the Government, and his rights under the act exhausted, "if he fail to perform any act or make any payment or proof in the manner and within the time specified in the foregoing regulations," is without authority of law, and said pargaraph is amended by eliminating therefrom the clause "or if he fail to perform any act or make any payment or proof in the manner and within the time specified in the foregoing regulations." 42–429

13. The act of June 22, 1910, applies to timber and stone entries of lands withdrawn or classified as coal upon which final proof had been submitted and entry allowed prior to the date of the act, as well as to entries of such lands upon which proof had not at that date been submitted. 42–601

14. Each legal subdivision embraced in a timber and stone entry must be sold for at least $2.50 per acre; and it is not sufficient that the price paid for all the legal subdivisions in the entry, taken in its entirety, averages $2.50 per acre. 43–554

15. Under paragraph 19 of the timber and stone regulations an applicant under the timber and stone act is entitled to purchase, in the absence of an appraisement of the land within nine months from the tender of his sworn statement, at the price named in his sworn statement; and in the absence of fraud or misrepresentation, there is no authority for an appraisement or reappraisement of the land after the application has been or is entitled to be allowed. 43–428

16. The regulations of September 20, 1922, which changed the prior existing regulations by requiring that an appraisal be made before an application to purchase under the timber and stone act can be completed, became operative as to applications then pending for unappraised lands, filed less than nine months prior to that date, and applicants under such applications acquired no vested rights that would defeat withdrawal of the lands at any time prior to their appraisal. 51–302

17. The timber and stone act contemplates that payments thereunder shall be made in lawful money of the

United States; and in the absence of positive statutory authority therefor, Supreme Court scrip, not being legal tender, may not be accepted in payment for lands under that act. 44–54

18. The submission by a special agent of a tentative appraisal of lands within nine months from the tender of a sworn statement therefor by an applicant under the timber and stone act, which appraisal was not approved and filed in the local office within that period, does not constitute an official appraisal, and the applicant is entitled, under section 19 of the timber and stone regulations, to make entry of the lands within 30 days after the expiration of the nine months' period, at the price, not less than $2 50 per acre, specified by him in his application as the reasonable value thereof. 45–81

19. Where an applicant to purchase under the timber and stone act protests the appraisement of the land and applies for reappraisement, he is not entitled, under paragraph 19 of the timber and stone regulations, upon failure of reappraisement within nine months from application therefor, to purchase at the price named in his sworn statement, but must await the reappraisement and pay the price fixed thereby. 45–106

20. No rights are acquired by the filing of a timber and stone declaratory statement for land at that time inhabited by a *bona fide* settler, notwithstanding the settler may thereafter abandon the land. 45–184

21. Where timber and stone application has been duly filed, notice of proof given, and the purchase money actually paid, the applicant has shown more than a mere intent to purchase—in fact is in practical effect a purchaser; and upon her death under such conditions, proof by the heirs that the law has been complied with should be accepted and patent issued thereon. 47–196

22. Where an applicant under the timber and stone law dies after the filing of an allowable application thereunder, his heirs will be permitted to make proof and payment. 51–268

23. An irrigation district is not a corporation within the contemplation of the regulations approved August 22, 1911, under the timber and stone act of June 3, 1878, and is therefore neither qualified nor entitled to make purchase thereunder. 47–250

24. A complete equitable title becomes vested upon the claimant's full compliance with the law, and the final certificate upon a stone entry is *prima facie* evidence of that title, and thereafter such entryman can not be compelled to accept a limited patent pursuant to the act of July 17, 1914, because of a subsequent report that the land is valuable for oil or gas, unless the Government makes the charge and shows upon assumption of the burden of proof that the land was of known mineral character at the date of the perfection of the claim. 48–411

25. The requirement that a timber and stone applicant must, within 30 days from service of notice, deposit with the receiver the appraised price of the land, is a departmental regulation which may be waived where good faith has been manifested and its literal enforcement would work hardship not rendered necessary by any public need. 50–425

26. Where a homestead application is filed for a tract classified as timberland, accompanied by a petition for reclassification, which application is rejected because of failure to tender one-fifth of the purchase price, and applicant appeals therefrom, subsequent instructions directing the rejection of all applications for lands so classified will prevent the applicant from securing the suspension of such application by thereafter depositing the required payment of purchase money. 47–35

II. Character of Land

27. Where a timber and stone applicant examined the land applied for within 30 days prior to the filing of

his application, a showing of further examination by the applicant is not required. 41–409

28. A mere general knowledge, however intimate, of the locality in which a tract applied for under the timber and stone act is situated, does not meet the requirement that an applicant under that act must have personal knowledge of the particular tract he seeks to acquire. 42–437

29. The act of June 22, 1910, which authorizes entries, under certain nonmineral land laws, of the surface of lands, withdrawn or classified as valuable for coal, does not include either expressly or by implication entries under the timber and stone act. 50–342

30. The act of March 3, 1909, the purpose of which was to preserve the surface claims of persons who had made locations, selections, or entries under the nonmineral land laws for lands thereafter classified, claimed, or reported as valuable for coal, is broad enough, both in its terms and intent, to embrace entries under the timber and stone act, subject to the reservations specified in the act of 1909. 50–342

31. Lands subject to entry under the timber and stone act must not only be unfit for cultivation but must be chiefly valuable for timber, which value is judicable by smallest legal subdivisions; and where a smallest legal subdivision embraced in a timber and stone entry contains but little timber, and is chiefly valuable because it is the site of and controls access to a spring, such legal subdivision should be eliminated from the entry. 43–553

32. The value of growing timber for tanbark and fence posts may be taken into account in determining whether land is valuable chiefly for timber, within the meaning of the timber and stone act. 51–395

33. Lands covered by a growth of trees which are of little or no commercial value when severed from the soil are not subject to disposal under the timber and stone act as "chiefly valuable for timber." 44–130

34. The timber and stone act does not contemplate that lands which in their present condition are unfit for cultivation owing to the growth of trees thereon must be disposed of under said law even though the growth is of little or no value, but to authorize disposal of lands under that law it must appear that they are chiefly valuable for their timber and are unfit for cultivation. 44–129

35. A showing by a timber and stone applicant as required by the act of June 3, 1878, that the land applied for contains no valuable deposit of gold, cinnabar, silver, copper, or coal, constitutes merely *prima facie* evidence of the nonmineral character of the land; and where the land was, prior to the timber and stone entry, and prior to the act of June 22, 1910, withdrawn as coal land, and has since been held, as the result of a hearing, to be coal in character, the timber and stone entryman is entitled only to a restricted patent under the proviso to section 1 of said act of June 22, 1910. 44–48

36. A report by a field agent, after the issuance of a final certificate upon a stone entry, charging that the land contains oil and gas and was so known at the date of final proof, may be used as a basis for Government proceedings against the claim, but it is not competent evidence upon which final action adverse to the claimant may be taken, without charges, notice and an opportunity for a hearing. 48–412

37. Until the determination by the department that land applied for under the timber and stone act is subject to entry thereunder, and an appraisal has been made, no contract status exists between the Government and the applicant. 50–342

TIMBER CUTTING

See ALASKA LANDS, 41–354; COOS BAY WAGON ROAD LANDS; NATIONAL FORESTS, 50–268; OIL, GAS, ETC., LANDS, 51–251, 252.

1. Regulations of March 25, 1913, governing free use of timber on nonmineral public lands. 42–22

2. Regulations of March 25, 1913, governing free use of timber on mineral public lands. 42–30

3. Regulations of May 20, 1913, supplementing instructions of March 25, 1913, governing free use of timber on public lands. 42–163

4. Instructions of August 1, 1913, governing sale of fire-killed or damaged timber under act of March 4, 1913. 42–300

5. Instructions of December 14, 1916, concerning sales of timber on unreserved lands in Alaska. 45–576

6. Instructions of February 21, 1921, timber cutting by corporations organized in one State and conducting business in another. (Circular No. 737.) 48–17

7. Instructions of March 28, 1922, relative to free use of timber by citizens of Washington and Kane Counties, Utah. (Circular No. 818.) 48–608

8. Regulations of January 11, 1926, free use of timber by oil and gas permittees and lessees. (Circular No. 1048.) 51–311

9. Regulations of August 27, 1926, exportation of timber from public lands in Alaska. (Circular No. 1092.) 51–537

10. Jurisdiction over matters relating to the cutting of timber upon lands within the surface area of mining claims within national forests is vested in the Department of Agriculture and not in the Department of the Interior. 43–465

11. The Secretary of the Interior is without power to authorize the cutting of timber from the lands embraced in an unapproved forest lieu selection, even though the selector should execute bond to indemnify the United States in event the selection should fail. 43–176

12. There is nothing in the act of July 5, 1884, providing for the disposition of lands in abandoned military reservations, authorizing the disposition of the timber growing upon any such reservation, separate and apart from the lands. 33–413

13. The provisions of section 8, act of March 3, 1891, as amended, conferring upon the residents of certain States and Territories authority to cut timber on the public lands for agricultural, mining, manufacturing, or domestic purposes, contemplate the cutting and use of timber for smelting purposes. 34–78

14. The act of March 4, 1913, authorizing the Secretary of the Interior to sell any timber on public lands which has been killed or permanently damaged by forest fires, makes no provision for payment of the proceeds of such sales to persons who subsequently make entries of lands from which the timber has been so sold. 45–313

15. In the settlement of cases against parties who have innocently, but wrongfully, taken timber from public lands in States which have not prescribed rules governing the measure of damages, the stumpage value, or the value of the timber in the standing trees, constitutes the full measure of damages that the Government is entitled to recover. 50–211

16. While the act of March 4, 1911, which grants rights of way over the public lands for telephone, telegraph, and transmission lines, does not expressly authorize the cutting of timber from a right of way, yet such right must be implied as a necessary incident to the right of use and occupancy of the easement. 50–608

17. A grantee under the act of March 4, 1911, who cuts timber from lands within its right of way necessary for the construction and operation of the lines, becomes, upon payment for the

timber, the owner thereof, with full authority to dispose of it as it chooses. 50–608

18. Regulations of February 27, 1926, sale and removal of pine timber on Chippewa Indian lands, Minnesota. (Circular No. 1052.) 51–388

TIMBER LANDS

See Alaska Lands, 44–441; National Forests, 49–365, 448; Oregon & California Railroad Lands, 50–376; Timber and Stone Act; Timber Sales.

1. Instructions of November 3, 1919; free use of timber in Idaho by citizens of Malheur County, Oreg. 47–295

2. Instructions of November 3, 1919; free use of timber in Nevada by citizens of Modoc County, Calif. 47–296

3. Alaska timber regulations of September 1, 1920; act of June 5, 1920. (Circular No. 722.) 47–564

TIMBER SALES

See Coos Bay Wagon Road Lands, 47–381, 411; Oregon & California Railroad Lands, 46–447.

1. Regulations of September 11, 1926, sale of dead or down and fire-killed or damaged timber; circular No. 258, superseded. (Circular No. 1093.) 51–574

TIMBER TRESPASS

See Claims for Damages, 50–211, 223.

1. Instructions of June 22, 1915, concerning the measure of damages in timber trespass cases. 44–112

2. Instructions of March 14, 1923, rules relating to measure of damages in timber, coal, oil, and other trespasses. (Circular No. 881.) 49–484

3. In cases of innocent trespass, where timber is cut from lands of the United States, the stumpage value, and not the value after severance, is the proper measure of damages. 43–106

TOWN LOTS

1. Instructions of August 5, 1914, under act of July 9, 1914, concerning patents to transferees of town lots. 43–361

2. A foreign corporation authorized to do business within the State of Montana, and empowered by its charter and the laws of that State to hold real estate, and which has improved and is in possession of and conducting its business upon town lots within the town site of Poplar, in that State, is qualified within the meaning of section 14 of the act of May 30, 1908, so far as the requirement of residence is concerned, to make entry of such lots under and in accordance with the provisions of that section. 41–331

TOWNSHIP PLAT

See Survey, 43–103, 328.

1. Instructions of January 29, 1917, relative to the filing of township plats. 45–648

TOWN SITES

See Alaska, 46–455, 460; 48–382; Homestead, 49–278; Mining Claim, 47–25.

1. Regulations respecting public reserve in Timber Lake and Dupree town sites, S. Dak. 42–3

2. Regulations for the sale of unsold and unreserved lots and tracts in Pablo, Tabor, and d'Aste town sites in the former Flathead Indian Reservation, Mont. 47–175

3. Regulations for the sale of certain lots in Minnesota town site in the former Rosebud Indian Reservation, Tripp County, S. Dak. 47–177

4. Regulations for the sale of lots in the town sites of Omak, Nespelem, Astor, and Inchellum, in the former Colville Indian Reservation, and Klaxta, in the former Spokane Indian Reservation, Wash. 47–179

5. Regulations for the sale of lots in Browning town site, within Black-

feet Indian Reservation, Teton County, Mont. 47–213

6. Regulations for the sale of lots in the town sites of Desmet, Worley, and Plummer, in the former Coeur d'Alene Indian Reservation. 47–215

7. Instructions of June 23, 1920, as to Government town sites on reclamation projects. (Circular No. 705½.) 47–413

8. Instructions of December 22, 1921, restoring Talkeetna town site, Alaska. (Circular No. 797.) 48–382

9. Instructions of July 20, 1926, survey and disposition of Indian possessions in trustee town sites, Alaska. (Circular No. 1082.) 51–501

10. The preference right accorded by the act of March 16, 1912, to certain settlers does not contemplate residence, but actual occupation in good faith for town-site purposes; and the operation of a warehouse is occupation within the meaning of that act. 47–323

11. The unappropriated lands within the town sites created pursuant to the act of March 20, 1906, in the Kiowa, Comanche, and Apache Indian Reservations in Oklahoma, are subject to disposition only in accordance with the terms of that act and congressional legislation is necessary to effect their restoration to disposition in any other manner. 50–189

12. Should Congress authorize the restoration of the unappropriated lands within the town sites in the Kiowa, Comanche, and Apache Indian Reservations in Oklahoma, one filing an application to purchase or enter any of those lands prior to such restoration would not acquire a preference right under such application unless the act authorizing the restoration should so expressly provide. 50–189

13. Under the authority imposed upon him by section 11 of the act of March 3, 1891, to dispose of town lots in Alaska, a town-site trustee is empowered to designate a United States commissioner to conduct hearings in controversies involving conflicting claims to lots under that act. 51–126

TRADE AND MANUFACTURING SITE

1. Under the principle *de minimis non curat lex*, the right to acquire a trade and manufacturing site in Alaska under section 10 of the act of May 14, 1898, which specifies that one claim only may be purchased by any one person, association, or corporation, will not be denied to a corporation merely because a minority interest of its stock is owned by stockholders who are also holders of minority stock in another corporation that had acquired title to public lands under that act. 50–334

2. A regulation issued pursuant to section 10 of the act of May 14, 1898, requiring, in connection with an application for a trade and manufacturing site in Alaska by an association or corporation, a showing that each member thereof has not entered or acquired title to any land under the act, does not exceed the requirements of the act, and is valid. 50–334

3. Section 10 of the act of May 14, 1898, limits the right to purchase a tract of land in the Territory of Alaska, for a trade and manufacturing site, to land actually occupied and used for such purpose, and an application for a prospective business site is not within the contemplation of the act. 51–194

TRANSFER AND TRANSFEREE

See ASSIGNMENT; DESERT LANDS, IV; MORTGAGE, 48–582; OIL, GAS, ETC., LANDS, XI; RECLAMATION, IV.

1. In any proceeding against an entry on which final certificate has issued the Government is bound to make a known transferee a party thereto, even though notice of such transfer has not been filed in the district land office as provided in rule 98 of Practice. 47–602

2. The transferee of an entryman of Fort Peck Indian lands is entitled under the act of June 15, 1926, to the same benefits as to extension of time within which to complete payments as that act and the prior act of March 4, 1925, accord to the entryman himself. 51–523

TRAP ROCK

See MINING CLAIMS, 50–489.

TRESPASS

See COAL LANDS, 45–513; TIMBER TRESPASS.

TRIP COUNTY LANDS, SOUTH DAKOTA

See INDIAN LANDS, 44–195.

TRUST FUNDS

See INDIAN LANDS, 49–414.

TRUST PATENT

See INDIAN LANDS, II.

TUNNEL SITE

See MINING CLAIM, XII.

TURTLE MOUNTAIN INDIANS

See INDIAN LANDS, 44–524; 45–534.

1. The filing of a Turtle Mountain Indian selection, accompanied by the required certificate of the Indian agent or Indian Office as to the qualifications of the applicant (see department instructions of August 2, 1915, in 44 L. D. 229), segregates the land from other disposition. 46–14

2. When the contrary is not shown, it will be assumed that there has been compliance with the requirement that the Indian agent or the Indian Office shall furnish a certificate that the Turtle Mountain applicant is entitled to allotment. 46–14

3. Under department instructions of August 2, 1915 (44 L. D. 229), like segregative effect is given to allotment selections on the public domain under the fourth section of the general allotment act of February 8, 1887 (24 Stat. 388), as is given under the Turtle Mountain Indian act of April 21, 1904 (33 Stat. 189, 194). 46–14

4. A Turtle Mountain Indian who has received a patent in fee on his allotment, and thus become a citizen of the United States, may subsequently make a homestead entry upon the public domain, and it is immaterial, as regards such subsequent right, whether he satisfied his allotment right on lands within the former Turtle Mountain Reservation or upon the public domain. 46–405

5. An Indian who avails himself of the privileges of the general homestead law and receives patent thereunder necessarily acts in the capacity of a citizen; and as he thus separates himself from the tribe, he is not entitled thereafter to also make selection under the Turtle Mountain act of April 21, 1904. 47–356

UINTAH AND WHITE RIVER LANDS

See INDIAN LANDS, 45–509.

UMATILLA INDIAN LANDS

See PAYMENT, 44–505, 506; 46–59; 49–479.

1. Instructions of March 20, 1917, under act of February 17, 1917. (Circular No. 536.) 46–59

UNCOMPAHGRE AND WHITE RIVER UTES

1. The Indian title to the area in the State of Colorado formerly occupied by the Uncompahgre and White River Utes being extinguished, and Congress, in declaring same to be subject to disposition under the public land laws, having made no exception that would preclude appropriate disposition under laws applicable to other tracts of like character, such lands and deposits therein are subject to the provisions of the leasing act of February 25, 1920, notwithstanding the fact that under the terms of agreement the Indians would be entitled to the proceeds from disposition thereof. 47–560

UNITED STATES COMMISSIONER

See AFFIDAVIT; FEES, 46–4; FINAL PROOF, 46–4; OFFICERS.

1. Circular of August 23, 1915, suggestions to United States commissioners and judges and clerks of courts of record under section 2294, Revised Statutes. 44–350

2. Instructions of September 3, 1926, execution of proofs, affidavits, and oaths. (Circular No. 884, revised.) 51–572

3. Where a United States commissioner renders service for applicants or entrymen under the public land laws beyond his official duties under the law, such as the preparation or drafting of papers, furnishing information as to the description of lands, the status of entries, etc., he is entitled to receive such compensation therefor as may be agreed upon by the parties, or, in the absence of agreement, as the work is reasonably worth, provided it is clearly understood by the applicant or entryman that such charges are separate and distinct from the charges for official services under the law. 42–196

4. Official papers in land matters executed before a United States commissioner in her maiden name and under which she was commissioned should be accepted, in the absence of other objection, notwithstanding her marriage while holding such appointment. 50–649

UNITED STATES MINERAL SURVEYOR

See LAND DEPARTMENT, 44–153.

UNSURVEYED LANDS

See DESERT LANDS, 43–346, 497; 45–188; 46–318; SCHOOL LANDS, 46–396; 48–103; SELECTION, 43–381; SETTLEMENT, 48–1; SURVEY.

USELESS PAPERS

See RECORDS, 42–162.

UTAH, STATE OF

See NATIONAL PARKS, 50–662; SCHOOL LANDS, 46–185; 51–432.

UTE LANDS

1. The Indian title to the area in the State of Colorado formerly occupied by the Uncompahgre and White River Utes being extinguished and Congress, in declaring same to be subject to disposition under the public land laws, having made no exception that would preclude appropriate disposition under laws applicable to other tracts of like character, such lands and deposits therein are subject to the provisions of the leasing act of February 25, 1920, notwithstanding the fact that under the terms of agreement the Indians would be entitled to the proceeds from disposition thereof. 47–560

VALENTINE SCRIP

See SCRIP, 44–548; 45–469.

VESTED RIGHTS

See COAL LANDS, 50–602; LOREST LIEU SELECTION, 51–51, 270; HOMESTEAD, 49–361, 460, 461, 492, 608, 671; INDIAN LANDS, 49–348; 50–691; OIL, GAS, ETC., LANDS, 50–231, 665; PATENT, 49–548; RAILROAD GRANT, 49–541; SCHOOL LANDS, 49–341, 436, 611; 50–516.

1. Failure of a selector to fulfill, prior to the attachment of a withdrawal, an additional requirement imposed upon him by amended regulations, will not defeat a selection if, at the time of its acceptance by the local officers, there had been full compliance with the law and all existing applicable departmental regulations. 50–9

2. Until all fees and commissions required by law have been paid, a vested right does not attach under an application to make a soldiers' additional entry pursuant to section 2306, Revised Statutes, and therefore the submission of proof upon such application

does not, in the absence of the payment of the fees and commissions, bar an inquiry relating to the mineral character of the land as of a date subsequent to the submission of the proof. 50–326

3. The United States is not divested of its equitable title to public land until there has been a full compliance with all the conditions upon which the right to title depends, and, prior to that time, a tax imposed upon the land by a State is void. 50–486

4. The time of the submission of final proof upon a homestead entry showing full compliance with all the requirements of law, if unrefuted, and the payment of the requisite fees and commissions, mark the vesting in the entryman of equitable title to the land, regardless of any change as to its character that may thereafter be discovered before examination and approval of the proof by the General Land Office. 50–664

VILLA SITES

See INDIAN LANDS, 44–39.

WAGON-ROAD GRANT

See OREGON & CALIFORNIA RAILROAD LANDS; SELECTION, 50–587; STATES AND TERRITORIES, 45–613.

1. Instructions of March 21, 1919, Coos Bay Wagon Road lands. 47–53

2. Under the provisions of the act of February 25, 1867 (14 Stat. 409), granting lands in aid of the construction of The Dalles Military Wagon Road, the road as actually constructed defines the limits of the grant. 45–613

WAIVER

See OIL, GAS, ETC. LANDS, 50–369, 406; 665; PATENT, 51–63, 180; PRACTICE.

1. A waiver of a legal right is an intentional foregoing of the exercise of that right, and where the question arises as to whether silence or failure to act constitutes a constructive waiver, the conduct of the one on the part of whom the waiver is imputed may be considered in determining that point. 50–406

2. A waiver differs from an estoppel in that it is not dependent for its effectiveness upon the action of others. 50–406

WALAPAI LANDS

1. Instructions of September 8, 1925, exchange of lands in the Walapai Indian Reservation, Ariz. (Circular No. 1029.) 51–192

WARRANTS

1. General circular of May 24, 1912. 41–34

2. Bounty land scrip issued under authority of the act of August 31, 1852, in exchange for unsatisfied Virginia military bounty land warrants, is within the purview of the act of December 13, 1894, providing for the location and satisfaction of "unsatisfied military bounty land warrants under any act of Congress." 42–520

3. By section 2415, Revised Statutes, the location of a military bounty land warrant was restricted to legal subdivisions of public lands of the United States, subject to private entry. 50–438

4. By section 2415, Revised Statutes, the location of a military bounty land warrant was restricted to legal subdivisions of public lands of the United States, subject to private entry. 50–438

5. Where the records of the General Land Office fail to show that the locator of a military bounty land warrant complied with the requirements of the regulations relating to the location thereof, no presumption will arise that such location was perfected so as to vest equitable title to the located land in the locator. 50–486

6. Where the equitable title to a tract of land located under a military bounty land warrant fails to pass to the locator because the location was not perfected, a purchaser of the land at a tax sale by the State who is not

in privity with the warrant locator is not entitled to make cash substitution. 50–486

WASHINGTON, STATE OF

See National Forests, 49–645.

WATER EXPLORATION PERMIT

1. The Secretary of the Interior may, through the exercise of his supervisory power, sanction the amendment of a permit to explore for water granted under the act of October 22, 1919, inasmuch as such a permit is an "entry" in the sense in which that term is used in the administration of the public land laws relating to the amendment of entries. 48–380

2. Lands within a proved artesian well area in which wells are being successfully used for irrigation at a reasonable cost are not of the character that the act of October 22, 1919, contemplated should be designated as subject to exploration, and an application for a water exploration permit embracing lands within such area must be denied, nothwithstanding that it has not been clearly shown that all of the lands described in the application can be thus irrigated. 48–546

3. The segregation of land during the lifetime of a permit to drill or explore for water, issued pursuant to the act of October 22, 1919, is not a withdrawal thereof within the meaning of the public resolutions granting preference right of entry to those formerly in the military or naval service of the United States during the World War, upon the restoration to entry of public lands theretofore withdrawn from entry. 51–48

4. The limit of time for the performance of the conditions imposed by the act of October 22, 1919, as amended by the act of September 22, 1922, under a water exploration permit, is mandatorily fixed by statute and can not be further extended by the Land Department. 51–402

5. Land included in a water exploration permit under the act of October 22, 1919, but not selected for patent by the permittee, becomes subject to entry under section 2289, Revised Statutes, on the date that the acceptance of the final proof is noted on the records of the local office. 51–471

6. Land embraced within a water exploration permit under the act of October 22, 1919, is segregated as effectually as though it were included in a valid entry. 51–471

WATER FRONTAGE

See Alaska Lands, 44–22, 83, 441.

WATER HOLE

1. Instructions of May 25, 1926, amending all prior instructions relating to selections, filings, or entries of lands containing springs or water holes. (Circular No. 1066.) 51–457

2. Instructions of September 22, 1926. (Circular No. 1095.) 51–597

WATER POWER

See Federal Power Commission; Power Sites.

WATER RESERVE

See School Lands, 45–551.

1. Regulations of August 27, 1925, use of lands withdrawn as public water reserves. (Circular No. 1028.) 51–186

WATER RIGHT

See Desert Lands; Federal Power Commission; Reclamation, 49–153, 301, 472, 498, 604; 50–142, 143, 223, 224, 542; Right of Way; Water Supply.

1. Instructions of December 14, 1925, Federal water power act; Circular No. 729, amended. (Circular No. 1044.) 51–307

2. By the enactment of the Federal water power act, Congress contemplated that all of the waters on the

public or reserved lands of the United States which are or may become available for the generation of power should be reserved and set apart under such conditions as to result in the greatest public good, without regard as to their location within particular territorial limits. 51–53

3. Where one, by the construction of a tank upon a tract of public land, acquires a vested right to use water, by section 2339, Revised Statutes, and is in possession of the surrounding land, he will be accorded a preference right to acquire title to the land upon which his improvements are situated under an appropriate land law as against another who has been allowed to make an entry under the stock-raising homestead act. 50–355

4. The protection accorded by section 2339, Revised Statutes, to one who had acquired a vested right to the use of water appropriated under local laws and customs does not in itself permit him to assert such possession and occupancy of lands outside of the subdivision upon which the water and the improvements necessarily used in connection therewith are solely located as to defeat the right of another to initiate title thereto under the homestead laws. 51–128

WATER SUPPLY

See Desert Lands, 42–505; 43–282; 44–212; 45–14, 180; Reclamation, 42–207, 250, 253, 542, 543, 547; 43–210, 339, 406; 44–54f; 45–23, 541; 48–618; Right of Way, 48–278.

1. Under the statutes of Colorado, prior appropriation of water from a river gives the appropriator a right to only so much of the natural flow of the river as is applied by him to beneficial uses, and does not entitle him to have the natural flow of the river maintained in order that the amount of water appropriated by him shall continue available under the particular method adopted by him to carry it to the land upon which it is used; and so long as sufficient water is left in the river to meet the prior appropriation and beneficial use, the prior appropriator can not lawfully or equitably complain of the diversion of other waters of the river through appropriation and beneficial use, even though such appropriation and diversion should so lower the level of the river as to necessitate the adoption by him of other methods of transferring the water appropriated by him from the river to the lands upon which it is used. 41–399

2. The procedure for the appropriation of water provided by the act of March 9, 1907, of the legislature of Montana, is not exclusive and mandatory and does not bar appropriation by actual diversion and use; and the Land Department will recognize as *prima facie* sufficient to support final proof upon a desert land entry for lands in the State of Montana an appropriation by actual diversion and use of water, whether from an adjudicated or an unadjudicated stream, provided it shall appear by satisfactory evidence that there are unappropriated waters sufficient to satisfy such appropriation and to permanently reclaim the lands. 43–449

WIDOW, HEIRS, DEVISEE

See Contest, 45–215, 446; Desert Lands, 46–318; 48–26; Homestead, IV; Indian Lands, 48–479, 609.

1. Where a reclamation homestead entryman dies after he has offered satisfactory final proof the entry becomes a part of the assets of his estate, and when duly sold as such by the administrator, the purchaser, if otherwise qualified, will be recognized as the assignee of the entryman under the act of June 23, 1910. 47–625

WIND RIVER INDIAN RESERVATION

See Indian Lands, 45–314; 49–370.

WITHDRAWALS

See Coal Lands, IV; Homestead, 42–405, 475; 48–220, 280, 571; 49–460, 671; Indian Lands, 48–362, 435, 468; 49–139; Mineral Land, 43–248; Mining Claim, 43–232, 248; National Forests, 47–329; Oil, Gas, etc., Lands, 44–128, 178, 420; 46–46; 48–126, 155, 350, 459; 49–625; Oregon & California Railroad Lands, 48–431; Phosphate Lands, 44–378; Power Sites; Reclamation, III; Repayment, 48–292; 49–541; Reservation, 44–439; 47–141; 48–132; Restorations, 48–507; School Lands, 44–119, 120, 127; 45–551; 46–34; 48–614; 49–436, 611; Survey, 45–168.

1. Circular of October 21, 1912, under act of August 24, 1912, respecting exploration of withdrawn lands. 41–345

2. Instructions of April 21, 1913, defining procedure for withdrawal of public lands. 42–98

3. Instructions of August 4, 1921, under administrative order of April 23, 1921, with reference to State, railroad, and lieu selections. 48–172

4. Instructions of January 25, 1921, relative to first form reclamation withdrawals. (Circular No. 734.) 47–624

5. Administrative order of April 23, 1921, modifying administrative ruling of July 15, 1914, and overruling departmental decision in conflict with Supreme Court decisions in certain cases involving withdrawals of lands in school indemnity selections. 48–97

6. Instructions of October 8, 1921, relative to prior settlements on lands in stock driveway withdrawals. 48–220

7. Instructions of May 19, 1923, temporary withdrawals pending resurveys, to prevent homestead settlements; instructions of January 19, 1923, modified. 49–597

8. Regulations of June 17, 1914, amending paragraph 9 of regulations of April 25, 1910, concerning temporary withdrawals under Carey Act. 43–281

9. Settlement, residence, and improvement upon a tract of unsurveyed public land confer no such right upon the settler as will prevent withdrawal thereof by the Government for a public purpose. 41–627

10. No such right is acquired by a forest lieu, railroad, or State selection, prior to approval thereof by the proper officer of the United States, as will except the land from withdrawal by the Government under the act of June 25, 1910. 43–293

11. An order of withdrawal has the same force and effect as an adverse claim asserted by any qualified person; and if a claim within a withdrawn area would have been subject to peaceable entry by an adverse claimant, because of lack of diligence on the part of the prospector, it would be defeated by the order of withdrawal. 44–420

12. Nonmineral lands embraced within a lawful desert-land entry duly maintained and subsequently included within the boundaries of a petroleum reserve are excepted from the operation of the withdrawal by the act of June 25, 1910. (36 Stat. 847.) 46–17

13. Where there is no evidence or allegation that at the date of final proof and payment the land was mineral in character, and where there is nothing before the Department warranting further investigation as to the character of the land, unrestricted patent will issue notwithstanding the fact that the land is within the exterior limits of a withdrawal made after desert entry. 46–17

14. Where, after agricultural entry and prior to final proof, the land involved is included within the outboundaries of a petroleum reserve, the entryman may (1) apply for restricted patent, or (2) apply for a classification of the land as nonmineral, or (3) apply for a hearing at which the issue shall be the known

oil or nonoil character of the land at date of perfection of final proof. 46–46

15. The term "metalliferous minerals" in the act of August 24, 1912, amending the withdrawal act of June 25, 1910, was used to describe those minerals or ores of economic value from which the useful metals can be directly and advantageously extracted, and carnotite is not such a mineral. 46–468

16. Lands embraced within a petroleum withdrawal are thereby impressed with a *prima facie* mineral character, and the burden is upon the State to overcome this or suffer the rejection of its claim thereto under the swamp-land grant, which does not embrace mineral lands. 47–366

17. While a withdrawal under the act of June 25, 1910, reserves the land from settlement and entry by all except those coming within the proviso thereto, it is not such an "adverse claim" as will defeat an application by one who has maintained settlement to date of filing, even though more than three months have elapsed from the date such settlement right might have been made of record in the form of an entry. 47–326

18. As coal is not a "metalliferous mineral," the provision of the act of June 25, 1910, as amended August 24, 1912, that lands withdrawn thereunder "shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to metalliferous minerals," does not authorize the allowance of a coal entry for land so withdrawn. 47–329

19. As there was ample power in the Executive to make withdrawal or reservation of public lands for public use prior to the passage of the act of June 25, 1910, such withdrawals theretofore made were not revoked or made ineffective by that act. 47–329

20. While the act of June 4, 1897, provides that mineral lands in any forest reservation shall continue to be open to location and entry under the mining laws, yet this does not prevent withdrawal or reservation from any and all form of private appropriation, and devotion of the land to public use. 47–329

21. An oil withdrawal is deemed *prima facie* evidence of the mineral character of the land, and one who seeks to obtain an unrestricted patent under the homestead laws for lands within a petroleum reserve created prior to submission of proof, must sustain the burden of proving that the land is in fact nonmineral. 48–18

22. An Executive withdrawal under authority of the act of June 25, 1910, does not affect a prior valid application to make a soldiers' additional entry, provided that the applicant has complied with all applicable laws and departmental regulations. 48–94

23. A withdrawal of public lands under the act of June 25, 1910, made in aid of pending legislation, does not become inoperative by reason of the failure of Congress to enact the proposed legislation, but it remains in force until revoked by the President or by an act of Congress. 48–278

24. A withdrawal and inclusion in a petroleum reserve of public land embraced within a nonmineral entry in support of which final proof had not been previously submitted stamps the land with a presumptive mineral character sufficient to cast upon the entryman the burden of showing the contrary as of the date of submission of final proof. 48–281

25. An Executive order withdrawing a strip of land under the act of June 25, 1910, for right of way for electrical transmission lines, does not render the tracts lying on opposite sides of the withdrawn strip noncontiguous, and an entry embracing tracts on both sides of such strip may be allowed, but the entry papers and patent should contain an excepting clause excluding the area embraced in the withdrawal. 43–551

26. A withdrawal of public lands for power-site purposes under the provisions of the act of June 25, 1910, is a reservation within the meaning of the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes. 47–363

27. A coal land withdrawal does not defeat a selection made by the Northern Pacific Railway Co. pursuant to section 3 of the act of March 2, 1899, which authorized the exchange of its lands within the Mount Rainier National Park for unreserved, unappropriated, nonmineral lands elsewhere, where the company elects to take subject to the provisions of the act of March 3, 1909, and the lands are nonmineral in character except as to their coal contents. 50–146

28. The practice of withdrawing lands contemplates their segregation for purposes of investigation, and it is clearly the duty of the Land Department to seek such withdrawals whenever from evidence before it an inference or belief is warranted that lands are in fact mineral. 50–231

29. A petroleum withdrawal prior to the act of February 25, 1920, of unproven lands for the purpose of classification, was not extinguished by the passage of that act, inasmuch as the prospecting for oil and gas thereunder was intended merely as preliminary to leasing and not as a method of disposal, they being only subject to lease upon discovery of their value for mineral deposits. 50–231

30. A withdrawal under the act of June 25, 1910, is, in its nature, a continuing withdrawal which, although not attaching to land that at date of withdrawal was within a valid existing claim, attaches immediately upon default of the claimant thereafter. 50–262

31. A temporary withdrawal made prior to classification or reservation merely for withholding the land from disposition under the public land laws until further investigation can be made and a decision rendered as to the character of the land does not raise the presumption that the land is mineral nor does it dedicate it to any special purpose. 50–516

32. A report by the Geological Survey that land is prospectively valuable for oil or gas is, as to its effect upon a subsequent nonmineral entry, tantamount to a withdrawal, and administrative delay by the Government in following up the report with a withdrawal or classification of the land until after an entry had been allowed and compliance with the homestead law completed, does not relieve the entryman from fulfillment of the requirements of the act of July 17, 1914. 50–289

33. All withdrawals and reservations in effect when the plat of survey of a granted school section is accepted defeat, at least temporarily, the grant to the State, which has the right to delay the selection of indemnity to such time as it may see fit; but if the withdrawal or reservation is vacated prior to the filing of an indemnity selection the State must take the land in place. 50–628

34. A first-form withdrawal by the Secretary of the Interior under authority of the act of June 17, 1902, of lands, which, in his judgment, are required for irrigation works, is effective to preclude thereafter location under the mining laws of lands within the designated limits. 50–688

35. A permanent withdrawal which includes certain lands and omits others embraced within a prior temporary withdrawal does not, unless so expressly provided, effect the restoration of the omitted lands, but they still remain subject to the temporary withdrawal, reserved from selection or entry, until regularly restored. 51–158

36. Unless otherwise specified, the date of issuance, not the date of its promulgation, marks the commencement of the effective operation of an Executive order. 51–161, 303

37. The inclusion of land within a petroleum reserve after its classifica-

tion as coal does not abrogate, annul, or in any manner impeach the prior coal classification. 51–436

WITNESSES

See EVIDENCE, 44–41; FEES; HEARING, 49–318; PRACTICE, 44–365; 45–168; 50–637.

1. Instructions of June 29, 1926, fees of witnesses in public-land hearings. (Circular No. 1075.) 51–484

2. A witness subpœnaed under the act of January 31, 1903, to appear before the register and receiver to testify in a proceeding involving public lands, is entitled to the same fees and mileage allowances as are allowed by law to witnesses in the District Court of the United States in the district in which the land office is situated; and where called in more than one cause between different parties or wherein only one of the parties is the same, he is entitled to his fee for each day's attendance in each case in which he attends; but no extra allowances for expert testimony can be allowed under said act. 42–170

WORDS AND PHRASES CONSTRUED

See STATUTES.

1. The term "*actual residence*" as used in the homestead laws means personal presence and physical occupation of the land entered to the exclusion of a home elsewhere. 51–513

2. The word "after," in line 5, section 2, of the act of February 21, 1925, is meaningless, was inadvertently retained in the process of legislation, and should be ignored. 51–329

3. "All permits or leases thereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear" in section 19 of the leasing act. (See oil, gas, etc., lands.) 48–210

4. In construing a statute it is permissible to substitute the word "and" for the word "or" when found necessary to do so in order to impart the true legislative intent as gathered from the context and the circumstances attending its enactment. 50–153

5. The term "association" usually means an unincorporated organization composed of a body of persons, banded together for some particular purpose, partaking in its general form and mode of procedure of the characteristics of a corporation. 50–139

6. An application for a permit or lease by two or more persons jointly under the act of February 25, 1920, is *prima facie* an application by an "*association*" within the meaning of section 27 of that act. 51–299

7. The word "authorized" as used in section 13 of the act of February 25, 1920, is to be construed as clothing the Secretary of the Interior with discretionary authority in the granting of oil and gas permits under that section. See OIL, GAS, ETC., LANDS. 49–625

8. In coupling the expression "can not be confirmed" with the term "erroneously allowed," as those phrases are used in section 2 of the act of June 16, 1880, which authorized repayment where an entry was "erroneously allowed and can not be confirmed," the law necessarily contemplated an entry with reference to which the defect could not be cured. 50–161

9. "Carnotite" is not a metalliferous mineral. 46–468

10. The term "chlorides of sodium" as used in sections 23 and 24 of the act of February 25, 1920, includes ordinary table salt and salt in solution. See SALINE LAND. 49–502

11. "Coal," as construed in the leasing act of February 25, 1920. See COAL LANDS. 48–300

12. The term "coastal waters" as used in the Executive orders of December 8, 1924, and July 3, 1925, which withdrew certain lands and islands in the States of Alabama, Florida, and Mississippi, embraces not merely the waters that face the open sea, but the bays, the passages, the inlets, and the

sounds formed by the islands that skirt the coast. 51–462

13. The fact that the tide ebbs and flows in a river is not sufficient of itself to warrant the classifying of the river as "coastal waters." 51–462

14. A monument upon which a notice of an application for an oil and gas prospecting permit is posted, erected upon a site which is neither prominent nor open, nor convenient of access, is not in a "conspicuous place" within the meaning of section 13 of the act of February 25, 1920, and no preference right to a permit can be initiated by such posting and monumenting. 51–340

15. The words "conspicuous place," as used in statutes requiring the posting of notices, are equivalent in meaning to open to view; catching the eye; easy to be seen; manifest; seen at a distance; clearly visible; prominent and distinct. 51–340

16. Construction of the term "cut-over lands," as used in connection with the Oregon & California Railroad and the Coos Bay Wagon Road grant lands. 51–634

17. "Deposition" in section 2294, Revised Statutes, prescribing the fees for depositions, refers to final proofs and annual proofs of desert-land entries. 42–195

18. "Double the area" of cultivation, in act of June 6, 1912, referring to entries under section 6 of the enlarged homestead act, construed. 45–150

19. The word "entry," when used in the statutes and departmental regulations relating to amendments, is to be construed in its generic sense and treated as signifying an appropriation of public lands generally. 48–380

20. An oil and gas prospecting permit is not an "entry" within the meaning of that term as it is used in the statutes relating to the public lands. See OIL, GAS, ETC., LANDS. 48–580

21. An oil and gas prospecting permit or a lease consequent thereon, granted pursuant to the act of February 25, 1920, does not constitute an "entry," "location," or "other disposal" of the land included therein, within the meaning of those terms as contemplated by section 24 of the water power act of June 10, 1920. See OIL, GAS, ETC., LANDS. 48–459

22. Construction of the term "erroneously allowed" within the contemplation of section 2 of the repayment act of June 16, 1880. 50–161, 298, 627

23. "Existing entry." See HOMESTEAD (stock-raising). 48–32

24. The terms "existing entry" and "original entry," as used in section 4 of the stock-raising homestead act, mean one and the same thing; that is, an entry upon which final proof has not been submitted. See HOMESTEAD. 49–245

25. "Filing fees" in act of February 3, 1911. 41–420

26. "Filing fees" in act of February 3, 1911, includes the initial payment of 25 cents per acre on a desert-land entry. 42–94

27. The term "final proof" as used in sections 4 and 5 of the stock-raising homestead act contemplates a final proof which is complete and entitles the entryman to a final certificate and patent. 51–452

28. "Former entry." See HOMESTEAD (stock-raising). 48–32

29. The term "full value," as used in the departmental regulations of January 6, 1913, relating to payment for timber cut on public lands in the construction, maintenance, and operation of lines for which rights of way are granted pursuant to the act of March 4, 1911, is to be construed as meaning the entire stumpage value of the standing trees. 50–608

30. The term "heirs" as used in section 2291, Revised Statutes, does not include "widow." See CONTEST. 49–601

31. "Hereafter" in act of February 16, 1911. 41–78

32. The word "herein," as used in the exception clause of section 27 of the act of February 25, 1920, has reference to the leasing act as a whole and not merely to the section in which it is used. 50–294

33. "Homestead entry." See HOMESTEAD (reclamation). 48–295

34. "Honorably discharged." See HOMESTEAD. 47–325

35. The term "indemnity" as used in the statutes granting lands to the States for school purposes implies compensation for losses actually sustained by failure to receive designated sections in place, and not a right to select lands elsewhere because those in place happen to be of inferior quality. See SCHOOL LAND. 49–377

36. "Indian lands." See INDIAN LANDS. 48–609

37. Nothing contained in the terms of the act of February 25, 1920, authorizes that a construction shall be given to the term "Indian reservations," as used in the departmental regulations of March 11, 1920, so as to include therein lands merely withdrawn by Executive order for Indian purposes. See INDIAN LANDS. 49–139

38. Under the excepting clause in the grant to the Central Pacific by the act of July 1, 1862, as amended by the act of July 2, 1864, the term "iron land" will be construed in its ordinary meaning; that is, land not only valuable for iron, but as between iron and other mineral content, chiefly valuable for iron. 46–476

39. "Irrigation district" is not a "corporation" within contemplation of regulations approved August 22, 1911, under timber and stone act. 47–250

40. "Judicial restraint" as excuse for absence from homestead. 43–189

41. Construction of the term "lands valuable chiefly for timber," as used in the timber and stone acts. 51–366

42. Lands which contain 25,000 feet, or more, of saw timber, or its equivalent, to each 40-acre tract, are *lands containing merchantable timber* within the meaning of the stock-raising homestead act and should be excluded from designation thereunder. 51–395

43. The value of growing timber for tan bark and fence posts may be taken into account in determining whether land is *valuable chiefly for timber* within the meaning of the timber and stone act. 51–395

44. "Lawful successors" in Northern Pacific adjustment act of July 1, 1898. 42–221

45. The term "lease" used in section 29 of the leasing act of February 25, 1920, includes prospecting permits issued under that act. 51–166

46. "Legal representative" in repayment act of March 26, 1908, includes the assignee of a timber and stone entry. 44–516

47. An affidavit is "made before" an officer when it is subscribed and sworn to before him. 42–195

48. The term "metalliferous minerals" in the act of August 24, 1912, amending the withdrawal act of June 25, 1910, was used to describe those minerals or ores of economic value from which the useful metals can be directly and advantageously extracted, and carnotite is not such a mineral. 46–468

49. "Military service." See MILITARY SERVICE. 48–204

50. In contemplation of section 2307, Revised Statutes, the children, male or female, of a deceased soldier, are "minor orphan children" until 21 years of age, notwithstanding the statutes of the State declare that females reach their majority at 18. 43–337

51. "Minor orphan children" in section 2307, Revised Statutes, includes legally adopted children. 44–65

52. "Navigable water" in act of May 14, 1898, as amended by act of March 3, 1903. 42–213

53. The term "navigable waters" is defined by the act of May 14, 1898, to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of high-water mark. 50–79

54. Construction of the term "nonmineral lands," as used in the timber and stone acts. 51–366

55. In the statutes relating to entries of public lands the expressions "not more than 160 acres," "one-quarter section," and "not to exceed one-quarter section" are to be construed to mean approximately 160 acres. See STATUTES. 49–647

56. "Occupy" in section 2 of act of April 28, 1904. 42–56

57. By the use of the phrase "of equal quality" in the act of April 28, 1904, it was contemplated that there should be an even exchange, and the equality of the selected and base lands exchanged pursuant to the act must be determined in accordance with the conditions existing at the time of filing the selection. See SELECTION. 49–522

58. Construction of the words "officers, soldiers, sailors, and marines," as used in the act of January 21, 1922. 51–634

59. "One quarter section." See HOMESTEAD (additional). 48–163

60. The term "or other waters," as used in the act of March 3, 1903, includes all waters of sufficient magnitude to require meandering under the Manual of Surveys, or which are used as a passageway or for spawning purposes by salmon or other sea-going fish. 50–80

61. "Own" and "owned," as construed in the stock-raising homestead act. See HOMESTEAD (stock-raising). 48–270

62. "Owned by the United States." See INDIAN LANDS. 48–440

63. Lands withdrawn from the public domain by Executive order for the use of the Indians are lands "owned by the United States," within the purview of that term as used in the act of February 25, 1920, and may be included within an oil and gas prospecting permit under section 13 thereof. See INDIAN LANDS. 49–139

64. The term "past production" as used in section 35 of the leasing act has particular reference to cases arising under section 18 of that act, where relief is authorized upon payment to the Government for the minerals produced prior to application for relief, and it has no applicability to coal production. 50–501

65. By the terms of the leasing act of February 25, 1920, the rights of a "person" or an "association" are coextensive with those of a corporation. 51–299

66. The preference right granted by section 8 of the stock-raising homestead act of December 29, 1916, is one of the "preference rights conferred by existing laws" expressly excepted from the operation of the joint resolution of February 14, 1920, as amended by the joint resolution of January 21, 1922, which granted preference right of entry to ex-service men of the war with Germany. 51–45

67. "Proprietor" within the meaning of the statute declaring disqualified to make homestead entry one who is the proprietor of more than 160 acres of land. 43–200

68. The word "proprietor," as employed in section 2289 of the Revised Statutes as amended by section 5 of the act of March 3, 1891 (26 Stat. 1095), means owner; and an essential to ownership is present possession or enjoyment, or the present right to acquire possession. 46–290

69. One having only a vested estate in remainder in lands is not "proprietor" thereof within the meaning of section 5 of the act of March 3, 1891, and such interest in lands does not disqualify him from making homestead entry. 46–290

70. The word "*provided*," as used in section 13 of the act of February 25, 1920, is to be construed as a conjunction, and when thus construed all preceding provisions in that section not inconsistent with the later provisions thereof are applicable in so far as they relate to permits issued both for lands in the United States and in Alaska. 51–177

71. "Public lands." See INDIAN LANDS. 48–440

72. "Public lands," as used in the act of May 20, 1836, later embodied in section 2448, Revised Statutes. See INDIAN LANDS. 48–609

73. "Purchaser" in section 5, act of June 6, 1900. 42–153

74. Construction of the term "reasonably compact form," as used in section 13 of the act of February 25, 1920. 50–353

75. A rock crusher or pulverizer, not shown to be connected with, or forming an essential part of the instrumentalities used in any process of reduction, is not a "reduction works" within the meaning of the last clause of section 2337, Revised Statutes. 51–459

76. A temporary withdrawal made with the view to classification and appraisal of land for its coal contents does not constitute a "reservation" within the meaning of the proviso to section 6 of the enabling act of July 16, 1894, granting public lands to the State of Utah for school purposes. 50–516

77. Construction of the term "shall be in compact form," as used in section 14 of the act of February 25, 1920. 50–562

78. The phrase "shore line," as used in section 10 of the act of May 14, 1898, means the high-water line. 50–81

79. "Subsidiary" in act of May 11, 1898, concerning rights of way for power purposes. 42–564

80. "Successor in interest" in Northern Pacific adjustment act of July 1, 1898. 42–464

81. "Such deposits," as used in section 2 of the act of July 17, 1914. See MINERAL LANDS. 48–6

82. Porto Rico is not a *Territory* of the United States within the meaning of that term as it is generally used by Congress in dealing with the Territories. 51–54

83. Construction of the term "timber," as used in the timber and stone acts. 51–366

84. In the sense of physical detachment the term "island" is complete in itself without the additional word "unattached." Query: Does the word "unattached" as used in the act of August 22, 1912, have reference to lands free from adverse claim. 51–481

85. Construction of the term "unoccupied lands" as used in the timber and stone acts. 51–366

86. Construction of the term "unreserved and unappropriated lands," as used in the timber and stone acts. 51–366

87. Within the contemplation of the act of August 22, 1922, granting to the State of Wisconsin certain islands therein, lands are *unsurveyed* until the survey thereof shall have been approved by the Commissioner of the General Land Office. 51–481

88. "Vacant coal land of the United States not otherwise appropriated," as used in section 2347, Revised Statutes. See COAL LANDS. 48–226

89. The term "valid claims" as used in section 37 of the act of February 25, 1920, relates to unperfected claims to mineral lands and does not contemplate a completed grant of nonmineral lands to a State in aid of its common schools. 50–231

90. Construction of the term "valuable for," with reference to minerals as used in the act of July 17, 1914. 50–276

91. "Vested right." See INDIAN LANDS. 48–435

WYOMING, STATE OF

See INDIAN LANDS, 49–370; RIGHT OF WAY, 48–278; SCHOOL LANDS, 46–34.

YANKTON RESERVATION

See INDIAN LANDS, 45–568.

YUMA AUXILIARY PROJECT

See RECLAMATION, 48–235.

YUMA INDIAN LANDS, ARIZONA

See INDIAN LANDS, 44–393.

ZION NATIONAL PARK

See NATIONAL PARKS, 50–662.